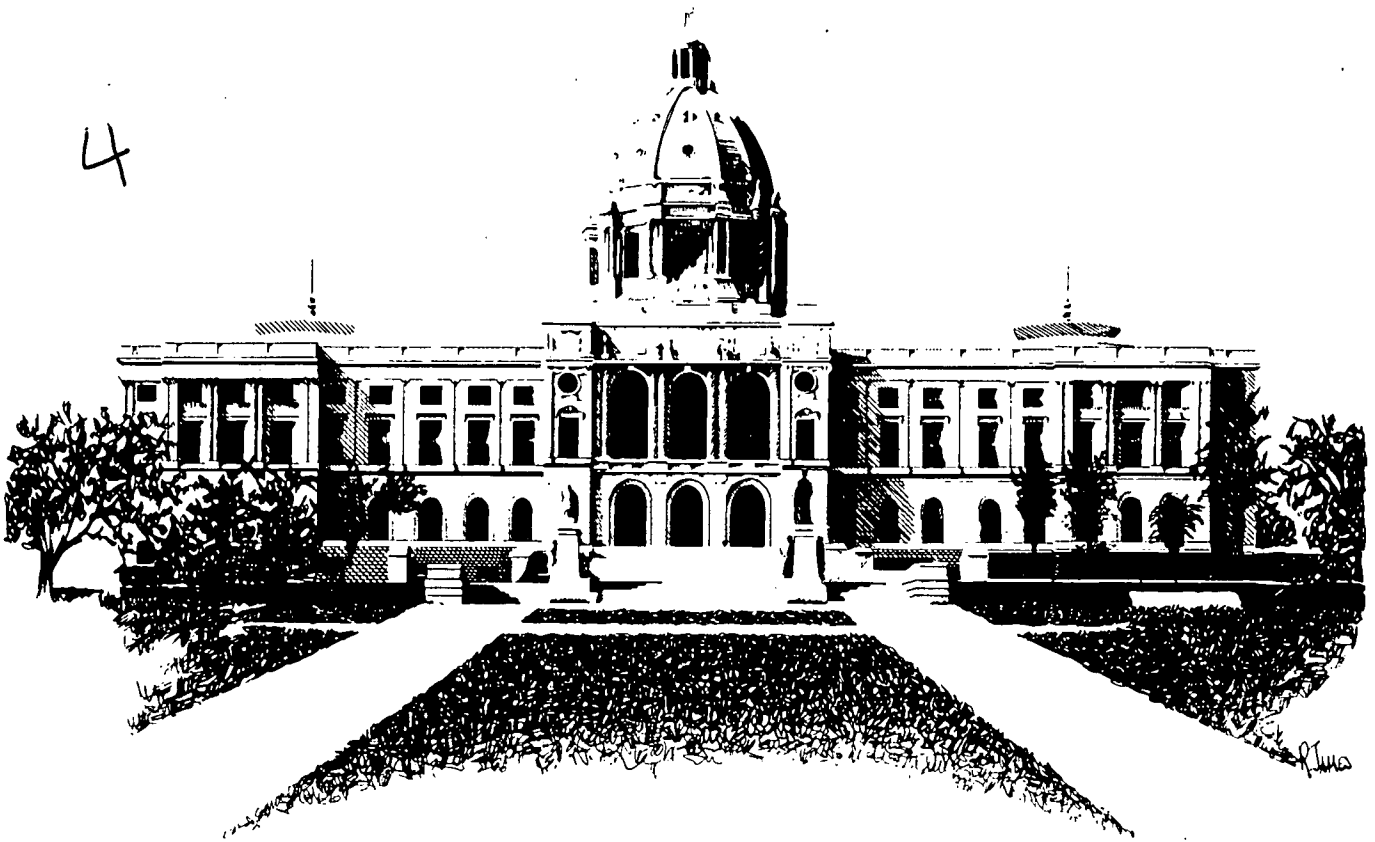


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# STATE REGISTER

STATE OF MINNESOTA



VOLUME 10, NUMBER 26

December 23, 1985

Pages 1397-1452

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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 10			
27	Thursday December 12	Thursday December 19	Monday December 30
28	Thursday December 19	Friday December 27	Monday January 6
29	Friday December 27	Monday January 6	Monday January 13
30	Monday January 6	Monday January 13	Monday January 20

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** also.

**The PROPOSED RULES section contains:**

- Calendar of public hearings on proposed rules.
- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

**The ADOPTED RULES section contains:**

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless an agency requests this.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
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**The OFFICIAL NOTICES section includes (but is not limited to):**

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before April 8, 1985 are published in the *Minnesota Rules 1985*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The *State Register* publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

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# PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Labor and Industry

### Proposed Rules Relating to Workers' Compensation; Independent Contractor

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, proposes to adopt the above-captioned rules without a public hearing. The Department has elected to follow the noncontroversial procedures set forth in Minn. Stat. §§ 14.21-14.28 (1984).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed rules are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe  
Commissioner, Department of Labor and Industry  
5th Floor, Space Center Bldg.  
444 Lafayette Road  
St. Paul, Minnesota 55101  
(612) 296-2342

Authority for the adoption of these rules is contained in Minn. Stat. §§ 176.041, subd. 1 and 176.83, subd. 11 (1984). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied upon to support the proposed rules and assesses the impact of the proposed rules on small businesses and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

The proposed rules will affect small businesses. The rules will enable small businesses to determine whether individuals providing personal services to them are employees, for whom workers' compensation coverage is required, or independent contractors, for whom coverage is not required. The rules place no additional financial burdens on small businesses as the purchase of workers' compensation coverage for employees is already required by law.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final rules as adopted, will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the rules as originally proposed, or who wish to receive a free copy of the final rules as adopted, should submit a written request to the Commissioner at the above address.

The text of the proposed rules follows this notice in the *State Register*. The rules establish criteria for determining whether an individual is an independent contractor for purposes of workers' compensation coverage.



One free copy of the proposed rules may be obtained by contacting Carla Mitrovich at the above address or by calling (612) 296-2342.

December 9, 1985

Steve Keefe  
Commissioner; Department of  
Labor and Industry

### Rules as Proposed (all new material)

#### INDEPENDENT CONTRACTOR

##### 5222.0010 PURPOSE.

The purpose of this chapter is to establish standards for distinguishing between an employee and an independent contractor for purposes of workers' compensation coverage under Minnesota Statutes, section 176.012, paragraph (e). For those occupations specifically discussed in parts 5222.0020 to 5222.0312, this chapter establishes a "safe harbor" for assuring either independent contractor or employee status in those occupations. Where a worker is within the scope of the definition of a part, but does not meet the safe harbor criteria for either independent contractor or employee status, the determination shall be made as described in part 5222.0320.

"Employee" as used in this chapter means a worker who is not an independent contractor. The employee safe harbor criteria are not intended to define "employee" under Minnesota Statutes, section 176.011, subdivision 9 for any purpose other than distinguishing workers who are not independent contractors.

##### 5222.0020 ARTISANS.

Subpart 1. **Definition.** An artisan is a person who has been trained in a mechanical art or trade. The particular skill necessary in the work is acquired by attending a vocational school, serving an apprenticeship, or by working as a handyman or helper and learning the trade informally.

Artisans include bricklayers, blocklayers, cable installers, carpenters, electricians, roofers, siders, painters, plasterers, paperhangers, tapers, joiners, plumbers, and steamfitters.

Subp. 2. **Independent contractor.** An artisan is an independent contractor and not an employee if all of the following criteria are substantially met.

A. The artisan is responsible for the final result, is free to choose the means and methods for accomplishing the result, and is not required to conform to fixed hours.

B. The artisan is free to select others to assist in performing the job.

C. The artisan has the opportunity of making a profit or suffering a loss and is not guaranteed a minimum income.

D. The artisan has business expenses beyond the furnishing of tools, such as scaffolding, ladders, trucks, equipment, and advertising.

E. The artisan has a substantial investment in facilities or equipment.

F. The artisan holds himself or herself out to the public as being available to perform services for others.

G. Payment for the work is on a job basis for a complete job rather than a time basis.

H. The artisan agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** An artisan is an employee if all of the following criteria are substantially met.

A. The artisan is hired to do the work personally and any helpers are hired, paid, and subject to control by the purchaser of the artisan's services.

B. Work is during fixed hours established by the purchaser and on a full-time basis.

C. The artisan is paid on an hourly, weekly, or similar rate that is independent of the amount of work completed.

D. The artisan has no substantial investment in facilities or equipment for doing the work.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

## PROPOSED RULES

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E. Materials and equipment other than hand tools are supplied by the purchaser of the artisan's services.

F. The artisan will not incur a loss or realize a profit by exercising independent judgment in hiring helpers, selecting the materials used, determining methods of work, or similar matters.

G. If the artisan does not complete the job, the artisan is not responsible for damages for noncompletion or for obtaining a replacement to complete the job.

### 5222.0030 BARBERS.

Subpart 1. **Definition.** Barbers are persons registered to practice barbering pursuant to Minnesota Statutes, chapter 154. A registered barber's apprentice is not an independent contractor.

Subp. 2. **Independent contractor.** A barber is an independent contractor if all of the following criteria are substantially met.

A. The barber rents a barber chair from the purported employer for a flat sum per week, month, or similar time basis.

B. All payments by customers for services are retained by the barber.

C. The barber furnishes his or her own tools, but need not furnish linens or supplies.

D. The purported employer does not have the right to control the means and manner of the barber's performance of services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

E. A written agreement between the parties provides that the barber is an independent contractor.

Subp. 3. **Employee.** A barber is an employee if all of the following criteria are substantially met.

A. The barber is paid on a salary basis, though tips may be retained by the barber, or the employer retains a set percentage of the money taken in by the barber's services, excluding tips.

B. The employer furnishes equipment and supplies other than razors, combs, scissors, and similar items.

C. The employer furnishes uniforms if uniforms unique to the employer are required.

D. The barber does not advertise.

E. The employer may terminate the barber's employment for noncompliance with rules including hours of work, smoking, or wasting time.

F. A written employment agreement states that the parties are not independent contractors.

G. The employer has the right to control the means and manner by which the barber performs services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

Subp. 4. **Factors excluded.** The fact that barber associations or unions fix hours of work or other conditions of business operation indicates neither employment nor independent contractor status. Rules prescribed with respect to sanitary conditions by the state or city health departments are not to be considered in determining independent contractor or employment status.

### 5222.0040 BOOKKEEPERS AND ACCOUNTANTS.

Subpart 1. **Definition.** A bookkeeper is an individual whose work consists substantially of some or all of the following: recording items in proper journals and on special forms, posting ledgers, balancing books, compiling reports, and otherwise keeping a complete and systematic set of records of an organization's business transactions. Accountants licensed under Minnesota Statutes, chapter 326 are bookkeepers for the purposes of this part.

Subp. 2. **Independent contractor.** A bookkeeper is an independent contractor if all of the following criteria are substantially met.

A. The bookkeeper rents an office or maintains one in the home.

B. The bookkeeper makes his or her services available to the public.

C. The bookkeeper's services are rendered for a number of clients and are compensated for on a fee basis.

D. The bookkeeper pays his or her own business expenses, which include the cost of equipment, materials, and helper's wages.

E. The bookkeeper is hired to accomplish a specific result and is not subject to direction or control over the methods or means of accomplishing it.

F. The bookkeeper's services are not performed on the premises of the purchaser of the services.

Subp. 3. **Employee.** A bookkeeper is an employee if all of the following criteria are substantially met.

A. The bookkeeper performs services at regular intervals for a single business concern for a fixed salary.

B. The bookkeeper works on the employer's premises with the necessary supplies and office help furnished.

C. The bookkeeper does not make his or her services available to the public, and does not maintain an office of his or her own.

D. The bookkeeper works during fixed hours and enjoys the usual privileges extended by an employer to employees including paid vacations, sick benefits, or bonuses.

E. The bookkeeper's services are in connection with a system of bookkeeping or accounting adopted by the employer.

F. The bookkeeper is subject to direction and control of the employer, although he or she may not be closely supervised because of the skill required to do the work.

#### **5222.0050 BULK OIL PLANT OPERATORS.**

Subpart 1. **Definition.** A bulk plant operator is an individual who:

A. distributes the products of firms engaged in the oil business;

B. receives the oil products from the firm with which he or she contracts and delivers them to the retailers in his or her territory; and

C. collects money for the products from customers and forwards it to the firm.

Subp. 2. **Independent contractor.** A bulk oil plant operator is an independent contractor if all of the following criteria are substantially met.

A. The operator is in complete charge of the entire plant.

B. The operator's contract with an oil firm provides that the operator will:

(1) sell the firm's petroleum products on a consignment basis and account for all money collected;

(2) sell the products within a general territory at prices set by the firm;

(3) bear all expenses except freight on the products consigned;

(4) furnish trucks and other equipment; and

(5) hire, pay, and assume full responsibility for all necessary assistants.

C. The operator advertises the firms' products at his or her own expense.

D. The operator fixes the hours and days the plant remains open, and hires, pays, and controls the employees.

Subp. 3. **Employee.** A bulk oil plant operator is an employee if all of the following criteria are substantially met.

A. The operator does not have an investment in capital assets and is paid on a salary basis.

B. The operator is required to work fixed hours or full time.

C. The operator is included in the oil firm's employee benefits plans.

D. The operator is required to comply with instructions given by the firm.

E. The operator is not personally obligated to pay wages or does not assist in paying the truck or plant maintenance expenses.

F. The operator is hired to manage the plant on a salary basis under instructions on the method and manner of doing the work.

#### **5222.0060 COLLECTORS.**

Subpart 1. **Definition.** A collector is an individual who collects, accepts, or encourages payments from the customers of a business for merchandise sold or services rendered by that business.

Subp. 2. **Independent contractor.** A collector is an independent contractor when the criteria of item A or B is substantially met.

A. If the collector is a door-to-door or telephone collector, he or she:

(1) is assigned a specific territory and furnished lists of people from whom to collect;

(2) is not required to conform to fixed hours, devote any particular amount of time to the business, or produce a minimum volume of collections;

(3) is required to cover the territory regularly, but works out a schedule of contacts;

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

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- (4) reports to the office only to turn in collections and to get new lists;
  - (5) receives a fixed percentage of the collections made, out of which are paid all expenses connected with the work;
  - (6) is not guaranteed a minimum income; and
  - (7) is free to engage in other employment, including collecting accounts for other firms.
- B. The collector accepts payment of bills from the customers of a third party on the collector's premises and:
- (1) bills can be paid at any and all times the collector's premises is open for business;
  - (2) the collector is not required to be present if someone is on the premises to receive payments;
  - (3) the collector is not required to conform to fixed hours, or to devote any particular amount of time to the third party's business, or to give preference to the third party's customers;
  - (4) the collector deposits all money collected in a bank and periodically forwards to the third party copies of bank deposit receipts, and complaint forms from customers;
  - (5) the third party furnishes the collector with the necessary business forms, postage, and stationery;
  - (6) the collector is required to purchase a surety bond;
  - (7) the third party pays a salary for the collection services or the collector may receive a percentage of the money collected;
  - (8) the collector is not trained in the work or required to follow prescribed routines; and
  - (9) the collector is free to conduct private business activities in addition to the collection services.
- Subp. 3. **Employee.** A collector is an employee if all of the following are substantially met.
- A. The services of the collector are retained to further the employer's business.
  - B. The collector is required to perform services pursuant to schedules established by the employer.
  - C. The employer has first call on the collector's time and efforts.
  - D. The collector has no significant business expenses or investment in the business.
  - E. The collector is paid on a commission or salary basis.
  - F. The employer has the right to establish the means and methods used in collecting.
  - G. The employer has the right to interfere with or set the order of the services.
  - H. The collector must report at the firm's office regularly for conferences, training, or instructions.
  - I. The hiring of helpers or substitutes is not permitted.
  - J. The grounds for termination are not limited to failure to meet production quotas.

### 5222.0070 CONSULTANTS.

Subpart 1. **Definition.** A consultant is one who confers with and advises people on matters within the particular field in which he or she specializes. The consultant has developed a peculiar knowledge or special skill of a professional or semiprofessional nature through extensive training and education or through wide experience in a particular occupation.

Subp. 2. **Independent contractor.** A consultant is an independent contractor if all of the following criteria are substantially met.

- A. The consultant rents an office or offices at home.
- B. The consultant advertises in newspapers or trade journals, or maintains business listings, or otherwise holds himself or herself out to the public as being available for a particular type of service.
- C. The consultant is free to hire clerical help and assistants.
- D. The consultant's success in the business world is dependent entirely on personal efforts and the demand by the public for the services.
- E. The consultant operates under an arrangement where for a set fee technical advice or assistance is given.
- F. The consultant's contract of service is for a specified period of time or specific purpose.
- G. The consultant is free to work for others at the same time.
- H. The consultant is not required to observe regular hours of work either at the firm's offices or at home.

I. The consultant agrees only to be available for conferences and consultations at the request of the firm or, as in some cases, to perform services on a specified minimum number of days.

J. The consultant makes no regular reports and is not required to attend regular conferences with members of the firm.

K. The consultant is not subject to control or supervision, but is given a free hand in doing work.

L. The consultant is employed to do a specific job and those who employ the consultant are interested only in the result accomplished and not in the manner and means of accomplishing it.

Subp. 3. **Employee.** A consultant is an employee when all the following criteria are substantially met.

A. The consultant is retained for services which further the employer's business.

B. The consultant is required to perform services personally.

C. The consultant's services are not available to the public.

D. The consultant has no investment or business expense.

E. The consultant provides recurring, rather than sporadic or infrequent, services.

F. The employer has the right of first call on the services of the consultant.

G. The consultant is required to report on the progress of assignments.

H. Either party has the right to end the relationship at any time.

I. The consultant receives a fixed salary determined on a weekly, monthly, annual, or similar basis.

J. The consultant cannot realize a profit or loss from the services.

#### **5222.0080 DOMESTIC SERVICE.**

Subpart 1. **Definition.** Domestic service means household services such as housecleaning, meal preparation, or invalid companionship or care.

Subp. 2. **Independent contractor.** A person providing domestic services is an independent contractor if all of the following criteria are substantially met.

A. The service is performed in connection with some episode in the life of the purported employer's family, such as an illness of short duration, preparation for a wedding, the birth of a child, or other episode of limited duration that indicates an engagement to accomplish a specific job.

B. The domestic is free to work for others.

C. The domestic may hire helpers to complete the job.

D. The domestic is paid on a job basis rather than an hourly basis.

Subp. 3. **Employee.** A person providing domestic services is an employee if all of the following factors are substantially met.

A. The parties are not members of the same household or immediate family.

B. The services are performed regularly and over a considerable period of time.

C. The domestic received at least \$500 as wages from the employer for any three-month period during the preceding 12 months. This factor is alone sufficient to establish the employment relationship under Minnesota Statutes, section 176.041, subdivision 1.

D. The domestic is not claimed as a dependent for income tax purposes.

E. The domestic is paid on an hourly, weekly, or similar time basis.

F. The domestic does not contribute to the employer's household expenses.

#### **5222.0090 BABYSITTERS.**

Subpart 1. **Definition.** Babysitters are individuals who provide childcare services to parents and are not licensed to operate day care centers under Minnesota Statutes, chapter 245. Subparts 2 and 3 are applicable only if the threshold requirements of Minnesota Statutes, section 176.041, subdivision 1, have been met.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

## PROPOSED RULES

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Subp. 2. **Independent contractor.** A babysitter is an independent contractor if all of the following criteria are substantially met.

- A. The babysitter takes care of another's child in the babysitter's own home or other premises under the babysitter's control.
- B. The instructions given to the babysitter by the parents are general in nature, relating to matters of diet, health, rest, special foods to be given to the child, and who to contact in an emergency.
- C. The babysitter is allowed to exercise judgment on matters as to the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations which may arise.
- D. The babysitter is free to perform household chores when the child does not require personal attention.

Subp. 3. **Employee.** A babysitter is an employee if all of the following criteria are substantially met.

- A. The babysitter performs childcare services in the home of the child's parents.
- B. The babysitter has been engaged to devote services exclusively to the performance of the employer's work.
- C. The babysitter is given instructions regarding such matters as the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations that may arise.

Subp. 4. **Babysitter services contracted through agencies.** A babysitter is an employee of an agency in the business of supplying names of babysitters if all of the following criteria are substantially met.

- A. The agency maintains a register of names and addresses of individuals whom the agency determines are qualified to perform babysitter services. The agency advertises and otherwise holds itself out to the public as being engaged in the business of furnishing a babysitter service.
- B. The agency fixes the fee to be charged for the services and notifies the babysitter where to report and the hours to be worked.
- C. The babysitter pays the agency a specified amount or a percentage of the wages. Appearance and the performance of services must be guided by standards and rules issued by the agency.
- D. The babysitter must notify the agency when not available for an assignment and usually agrees to restrict work to that furnished by the agency.
- E. Any complaints as to the quality of the services are made by the parents to the agency, and the agency may remove the babysitter's name from its register.

### 5222.0100 INDUSTRIAL HOMEWORKERS.

Subpart 1. **Definition.** Industrial homeworkers are persons who work in their own homes or workshops on the manufacture or assembly of articles from materials supplied by the purchaser of their services. Services provided by industrial homeworkers include typing of envelopes and the manufacture, alteration, or finishing of gloves, slippers, bedspreads, slipcovers, pottery, boxes, toys, or similar items.

Subp. 2. **Independent contractor.** An industrial homemaker is an independent contractor when all the following criteria are substantially met.

- A. The homemaker works under agreements that only require the completion of assignments according to specifications and within designated times.
- B. The homemaker is furnished materials by the firm and, in accordance with a pattern or general instructions, turns out a finished product which measures up to the firm's standards.
- C. The completed products are paid for on a piecework basis.
- D. There is no requirement that the homemaker give preference to the firm's work, although the homemaker is expected to complete assignments within a specified time.
- E. The homemaker may work for others; however, in many cases, the amount of work furnished by one firm keeps the worker busy full time.
- F. Unsatisfactory work is done over without pay.
- G. Set hours of work are not prescribed by the firm, nor is the work supervised.

Subp. 3. **Employee.** A homemaker is an employee if all of the following criteria are substantially met.

- A. The services of the homemaker are closely integrated into the business of the firm that employs the worker.
- B. The homemaker is subject to virtually the same set of controls as employees who work on the firm's premises.

- C. The homemaker uses his or her own small hand tools, but large tools or heavy equipment is furnished by the firm.
- D. The homemaker works or is paid on an hourly basis and renders personal services of a recurring nature.
- E. The homemaker is given detailed instructions or training in the work and is required to change the work plans and the order of services when requested.
- F. Although there is usually no direct supervision over the services, the firm checks the finished product and has the right to change or direct the method of operation if the completed article is not satisfactory.
- G. The homemaker is required to report on progress periodically.
- H. The relationship is terminable by either party, with or without cause prior to completion of a project without incurring liability for damages for noncompletion.
- I. The employer may change the homemaker's work assignment.

**5222.0110 LABORERS.**

Subpart 1. **Definition.** Laborers are people whose work usually requires strength rather than skill, such as laborers, char-women, coal hustlers, gardeners, yard maintenance workers, landscaping and planting workers, tree trimmers, handy men, janitors, odd-job men, porters, window washers, and other unskilled workers.

Subp. 2. **Independent contractor.** The laborer is an independent contractor if all of the following criteria are substantially met.

A. The laborer generally must use business judgment to earn a livelihood. The laborer's success or failure depends on how assistants are managed, the protection of investment through proper care of tools and equipment, and the reputation established as a result of methods of doing business.

B. The services need not be performed personally.

C. The laborer holds himself or herself out to the public as available for furnishing a certain type of service on a job basis.

D. The laborer is free to hire assistants and the assistants are the laborer's own responsibility, that is, the laborer directs them, pays them, and is liable for the payment of taxes on their wages.

E. The laborer furnishes tools.

F. The laborer obtains work by recommendation, advertising in newspapers, or maintaining a business listing in a telephone or service directory.

G. The laborer is responsible only for completion of the job within a certain time and is free to use personal methods and means for doing the work.

H. The laborer agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** A laborer is an employee if all of the following criteria are substantially met.

A. The services must be performed personally.

B. The laborer works on employer premises or at locations assigned by the employer, at specified times, and with tools and facilities furnished by the employer. The services may be provided on a permanent, recurring, or itinerant basis.

C. Pay is computed on a time rather than a lump-sum basis.

D. The employer has the right to stop the laborer on one job and start on another, to speed up or slow down the worker, and to express dissatisfaction with the work and to have it redone.

E. The laborer is not responsible for damages for noncompletion of the work. If the laborer quits prior to completing the job, the laborer is not responsible for finding a replacement.

**5222.0120 MUSICIANS; GENERAL.**

The status of musicians or groups in parts 5222.0120 to 5222.0140 is not affected by the fact that an American Federation of Musicians Form B Contract, to which the leader is a party, purports to make the purchaser their employer. The actual relationship, rather than the terms of the contract, controls.

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### 5222.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.

Subpart 1. **Definition.** A cooperative orchestra is a musical group operated on a cooperative or partnership basis. All of the members have a voice in determining the membership, the engagements to be accepted, the division of the money received, and all other phases of the orchestra's operations. By common consent of the members one of the group may be designated as a leader whose duties are to act as spokesperson for the group and to negotiate engagements in the orchestra's name. A business manager or set manager or other nonplaying member may be a member of a cooperative orchestra.

Subp. 2. **Independent contractor.** All the members, including the leader, of an orchestra are independent contractors if all of the following criteria are met.

- A. Payment is not on an hourly basis. Proceeds from engagements are used to pay expenses and the remainder is distributed as determined by members.
- B. The group is free to work for other purchasers of its services.
- C. The purchaser does not have the right to discharge a member of the group, or to dictate the style or manner of playing the music.
- D. The group may be liable for damages for nonperformance if it quits prior to completing its engagement with a purchaser.

Subp. 3. **Employee.** Members of a cooperative orchestra are employees if all the following criteria are substantially met.

- A. The individuality of the orchestra is subordinated to the enhancement of the purchaser's reputation.
- B. The work relationship is not short term but is of a continuing nature.
- C. The purchaser has the right to discharge the leader or any of the orchestra members, to change the style or type of music, to have first call on the services, and to restrict the orchestra's outside activities.
- D. The purchaser pays the members on an hourly or time basis and bears the expenses of the orchestra.

### 5222.0140 MUSICIAN; ORCHESTRA LEADER.

Subpart 1. **Definition.** An orchestra leader or union contractor is the assembler or leader of a musical group that plays music in public for compensation.

Subp. 2. **Independent contractor.** An orchestra leader is an independent contractor if all of the following conditions are substantially met.

- A. The leader selects the members and rehearses and directs them.
- B. The leader holds out to the public as being able to furnish a musical organization and enter into contracts to furnish music.
- C. The leader has the primary right to control the orchestra members as to how, when, and where they work.
- D. The leader is charged with all expenses the orchestra incurs, and, after paying expenses and the salaries or hourly wages of the other members, suffers a loss or realizes a profit from the undertaking.
- E. The leader is paid a lump sum for an engagement.
- F. The purchaser of the music deals directly with the leader.
- G. The purchaser retains only such control over the leader as to ensure the attainment of the desired result, such as the privilege of making suggestions on the type or style of music and number of musicians wanted.

Subp. 3. **Subcontractor.** Where the leader is an independent contractor, the purchaser of music is responsible for the workers' compensation coverage of group members other than the leader under Minnesota Statutes, section 176.205, unless those members are independent contractors with respect to the leader or the purchaser.

Subp. 4. **Employee.** The orchestra leader or assembler and members of the musical group are employees of the purchaser of musical services if all of the following criteria are substantially met.

- A. The purchaser hires a musician (usually called a union contractor) to assemble an orchestra to play at the purchaser's establishment. The purchaser specifies the number of musicians, the type of instruments, and the price per musician.
- B. The assembler of the group may be the orchestra leader if the purchaser designates him or her as the leader.
- C. The purchaser may accept all the musicians who have been assembled or make changes in the personnel with or without an audition.
- D. The purchaser pays for the services on an hourly basis and is responsible for the business expenses of the group.

### 5222.0150 OUTSIDE COMMISSION SALESPeOPLE OR MANUFACTURER'S REPRESENTATIVES; GENERAL.

The following factors, taken together, are not sufficient to establish an employment relationship for an outside commission



salesperson or manufacturer's representative under parts 5222.0160 to 5222.00180 territorial restrictions, fixing of sales prices and terms by the companies, the furnishing of leads, working off premises of the employer, and requirements that the salesmen investigate customers' complaints, collect delinquent accounts, and refrain from selling for competitors.

#### **5222.0160 TRAVELING SALESPEOPLE.**

Subpart 1. **Definition.** A traveling salesperson is associated with a manufacturer or distributor whose products the salesperson sells directly to wholesalers or retailers. The salesperson is assigned to territories and furnished with price lists and samples or descriptions of the merchandise to be sold. The salesperson is required to sell the merchandise at prices set by the firm and the firm reserves the right to accept or reject orders. The firm fills the orders by shipping directly to the customers and billing the customers directly. The salesperson receives compensation from the firm in the form of a percentage of the price the customers pay for the merchandise. The salesperson may be required to work full time, to not work for competitors, or to produce a certain amount of business regularly.

Subp. 2. **Independent contractor.** A traveling salesperson is an independent contractor if all the following conditions are substantially met.

- A. The salesperson is free to solicit when, where, and how he or she pleases.
- B. The salesperson chooses working hours and schedule of calls.
- C. The salesperson chooses his or her own means of travel and is responsible for the costs of travel.
- D. The salesperson pays his or her own expenses.

Subp. 3. **Employee.** A traveling salesperson is an employee if all the following conditions are substantially met.

- A. The salesperson is required to appear at or report to the firm's offices regularly.
- B. The salesperson must work during fixed hours or at certain times.
- C. The salesperson must follow and report on leads.
- D. The salesperson is required to take part in sales meetings or training courses.
- E. The salesperson is required to canvass territory at regular intervals.
- F. The firm is dependent principally on the services of traveling salespersons for the disposition of its merchandise.

#### **5222.0170 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.**

Subpart 1. **Definition.** A house-to-house commission salesperson sells door-to-door at retail prices to the customer. The salesperson does not purchase stock at wholesale, maintain that stock for resale, or retain the risk of loss if the stock is not sold.

Subp. 2. **Independent contractor.** A house-to-house commission salesperson is an independent contractor if all of the following criteria are substantially met.

- A. If assigned to territories, the salesperson is not granted exclusive rights to them.
- B. The salesperson is not required to canvass his or her territories within any specified time or to work during fixed hours or at certain times.
- C. The salesperson receives no training, is not required to follow an established routine or schedule, and devises his or her own methods and means of selling.
- D. The salesperson pays his or her own business expenses.
- E. The salesperson is not required to produce any minimum volume of business or follow leads furnished by the company.

Subp. 3. **Employee.** A house-to-house commission salesperson is an employee if all of the following criteria are substantially met.

- A. The salesperson works for only one company and on a full-time basis.
- B. The services of the salesperson are an important part of the company's business.
- C. Although the salesperson may not be required to report to the company's office at regular intervals, he or she often receives leads and instructions through the mail which must be followed.

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- D. The salesperson is required to file regularly a report of activities with the company.
- E. The salesperson is required to canvass his or her territory regularly.
- F. The salesperson is required to attend sales meetings or take part in training courses.
- G. The salesperson may be visited by a sales manager or supervisor who instructs and helps in developing sales techniques and other matters.
- H. The salesperson is expected to produce a certain amount of business to continue the relationship.

### 5222.0180 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

Subpart 1. **Definition.** A house-to-house dealer salesperson buys stocks of commodities at wholesale from a company and sells them at retail. In other respects, the dealer is similar to ordinary retail merchants and house-to-house commission salespeople.

Subp. 2. **Independent contractor.** A dealer is an independent contractor if all of the following criteria are substantially met.

- A. The dealer is not required to work during fixed hours or at certain times, to follow any particular routes or schedules or to report on his or her activities.
- B. The dealer keeps substantial inventories and has automobiles or trucks to deliver merchandise.
- C. The dealer may employ others.
- D. Compliance with suggestions or attendance at salesmanship meetings are optional with the dealers.
- E. The dealer is not required to solicit prospective purchasers identified by the company.
- F. The dealer chooses working hours and methods of solicitation.
- G. The dealer pays business expenses and, by selling on credit, takes a risk of loss.
- H. The dealer is dependent for a livelihood on personal efforts and ingenuity in establishing clienteles and good reputations.

Subp. 3. **Employee.** A dealer is an employee if all of the following criteria are substantially met.

- A. The dealer must report regularly on sales, prospects, and work activities.
- B. The dealer must report regularly for sales meetings and pep talks.
- C. Although not usually required to work during hours fixed by the firm, the dealer is expected to meet a certain quota.
- D. The dealer is restricted from selling on credit and must abide by prices set by the company.
- E. Merchandise may be returned to company with no loss to the dealer.
- F. The dealer is furnished leads and required to follow-up and report.
- G. The dealer is required to concentrate on certain products listed as "specials" and follow schedules or routes worked out by the company.
- H. If sales fall off, a manager or other company representative investigates and instructs the dealer how to increase sales.
- I. Helpers may be provided by the company for dealers who maintain large volumes of sales.
- J. The relationship is terminable by either party on short notice and without liability to the employee for noncompletion.
- K. Where the dealer trains others, the dealer is paid and may be elevated to a managership.

### 5222.0190 AGENT DRIVERS.

Subpart 1. **Definition.** An agent driver is a salesperson who drives a truck in selling and delivering bread, milk, meat, beverages, laundry, dry-cleaning, or similar services. The driver may sell to consumers at retail prices or at wholesale to retailers.

Subp. 2. **Independent contractor.** An agent driver is an independent contractor if all of the following criteria are substantially met.

- A. The driver does not contract with the firm to render personal services but only to buy a certain amount of a firm's products regularly.
- B. The driver may hire and pay helpers or use substitutes.
- C. Although the driver may work full time, the driver does so by choice; and selects working hours.
- D. The driver selects customers, sets prices, and often sells on credit.
- E. The driver pays truck maintenance costs and other business expenses.
- F. The driver cannot return unsold products to the firm.

G. Either party may terminate the relationship at any time without incurring liability.

Subp. 3. **Employee.** An agent driver is an employee if all the following criteria are substantially met.

A. The driver is assigned a route and required to cover it at regular intervals.

B. Helpers or substitutes are not permitted.

C. Prices are set by the company.

D. The driver cannot handle competing lines.

E. The driver is required to keep reports of sales and other matters.

F. The driver collects from customers and turns money over to the company.

G. The driver has no authority to determine whether sales may be made on credit.

H. The driver reports to the company office at specified times to load trucks, return unsold goods, and report on activities as requested.

I. The driver is required to follow leads.

J. The driver is expected to solicit new customers and adjust complaints.

K. The driver may quit or a firm may fire the driver on short notice, and neither is liable for damages for noncompletion.

L. The driver receives paid vacation, sick benefits, or other similar benefits offered to nondriver employees of the firm.

#### **5222.0200 PHOTOGRAPHERS' MODELS.**

Subpart 1. **Definition.** A photographer's model is a professional who poses for photographs that are used for commercial purposes. The photographs are reproduced and appear in magazines, newspapers, or similar media to aid in advertising commercial products. The model is knowledgeable or trained in such subjects as the art of make-up, fashion, hairstyling, acting, and posture.

Subp. 2. **Independent contractor.** A photographer's model is an independent contractor if all of the following criteria are substantially met.

A. The model engages a booking agent for a certain compensation, usually ten percent of the model's fees. The agent makes and arranges appointments for the model.

B. Fees are fixed by the agent, usually on an hourly basis.

C. The model reserves the right to limit the time or period of work and the right to work only during certain hours.

D. The model releases property rights in each specific photograph that is to be used commercially.

E. The model supplies his or her own wardrobes appropriate to the roles he or she is engaged to portray.

F. The model is free to pose for anyone who desires his or her services.

G. The model is not engaged on a permanent or periodic basis but solely for specific jobs and the model reserves the right to cancel bookings made by his or her agents.

H. The creation and enactment of the roles assigned them are left to the models' own discretion and initiative.

I. The model is free to use his or her skill and training in other fields of business activity, such as radio, movie shorts, fashion shows, and television shows.

Subp. 3. **Employee.** A photographer's model is an employee if all of the following criteria are substantially met.

A. The model works for only one or two photographers or firms and is paid a salary or guaranteed minimum wage to work during fixed hours on the employer's premises.

B. The model is required to conform to instructions or suggestions on, among others, costume, coiffure, general make-up, posture, or the position and expression to assume in an assigned role.

C. The model is paid a salary for first call on his or her services and on a full-time basis or part-time basis.

D. The work is performed mostly on company premises and is done in accordance with a supervisor's or manager's views on the best method of illustrating the good points of the garments or other products being modeled.

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E. Either party may terminate the relationship at any time.

### 5222.0210 PROFESSIONAL PERSONS.

Subpart 1. **Definition.** A professional is a person in an occupation that requires education equivalent to college graduation or beyond and involves compliance with professional and statutory licensing or registration standards before the individual can practice. The professional field includes architects, attorneys, certified public accountants, and engineers.

Subp. 2. **Independent contractor.** A professional is an independent contractor when all of the following criteria are substantially met.

- A. The professional sets up his or her own business office.
- B. The professional hires and directs assistants or helpers.
- C. The professional pays all expenses in connection with the business.
- D. The professional offers services to the public.
- E. The professional works at hours of his or her own choice.
- F. The professional is dependent for a livelihood upon the amount of time, energy, and ingenuity applied to the work.

Subp. 3. **Employee.** A professional is an employee if all of the following criteria are substantially met.

- A. The professional subordinates activities to the interests of the employer by working under conditions that make the professional's services an integral part of another's business.
- B. The professional works when and where a firm dictates.
- C. The professional is furnished an office and office facilities, and business expenses are met by the firm.
- D. The professional is paid a fixed salary determined on a weekly, monthly, annual, or similar basis.
- E. The professional's services are subject to supervision and review.
- F. The professional cannot hire a substitute or helper.
- G. The professional may be discharged at will and has the right to terminate the relationship at any time without liability.
- H. The professional incurs no expenses nor make any investment.
- I. The relationship is continuing.

### 5222.0220 DOCTORS OF MEDICINE; PART-TIME SERVICES FOR INDUSTRIAL FIRMS.

Subpart 1. **Definition.** Doctors are persons whose work requires licensure pursuant to Minnesota Statutes, section 147.02.

Subp. 2. **Independent contractor.** Doctors who, in addition to their private practices, enter into arrangements with industrial firms to examine and treat the firm's employees on a part-time basis, are independent contractors if all of the following criteria are met.

- A. The firm is interested in securing a medical service rather than the personal service of the doctor and an employment relationship is not contemplated under the terms of the agreement between the parties. The doctor, in effect, accepts the firm as an additional client in the doctor's private practice.
- B. The doctor has the right to leave the firm's premises during working hours if an emergency arises in private practice.
- C. The doctor has the right to send a substitute to perform the services.
- D. The doctor does not have the right to terminate the relationship on short notice.
- E. Direct supervision and control over the services were not contemplated by the parties to the agreement.

Subp. 3. **Employees.** Doctors described in subpart 1 are employees if all of the following criteria are substantially met.

- A. The doctor's services are materially integrated into the operating organization of the firm.
- B. The doctor performs services of a substantial nature for the firm on a regular and continuing basis.
- C. The doctor is subject to supervision and control by the firm to the extent necessary to require compliance with its general policies and procedures.
- D. The doctor is accorded the rights and privileges that the firm extends to its employees generally.

Subp. 4. **Definition of factors.** This subpart explains the factors listed in subpart 3.

- A. Materially integrated is determined by factors such as:
  - (1) the payment of a salary or fixed rate of pay as compared to remuneration on a fee basis;

- (2) a contract term indicating a mutual intention to create an employer and employee relationship;
- (3) the firm engages the services of a substitute in the event of the doctor's absence;
- (4) the remuneration is reported as wages for social security purposes; and
- (5) the doctor, for income tax purposes, reported the remuneration as wages.

B. Regular and continuing basis means agreement to a schedule of definite and fixed hours of service and the requirement to follow the schedule without substantial deviation.

C. Compliance with policies and procedures exists where the methods, routines, and procedures followed by the doctor are subject to supervision. The supervision may be of varying degree and nature, for example, supervision exercised by a medical director may include somewhat detailed control over the physician's medical routines where the supervision exercised by a hospital administrator may lay less emphasis on this aspect. However, the factor of compliance is met where the physician is required to follow the employer's rules regarding the physician's methods of operation generally, including the obligation to treat assigned patients, the report the physician must submit, the priorities the physician must follow both medically and administratively, and the standards the physician must maintain regarding equipment and cleanliness.

D. Rights and privileges include vacation and sick leave with pay, holiday pay, severance pay, and pension and insurance plans.

#### **5222.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.**

Subpart 1. **Definition.** Real estate salespeople are persons licensed as real estate salespersons under Minnesota Statutes, chapter 82. Securities salespeople are persons licensed as agents under Minnesota Statutes, chapter 80A.

Subp. 2. **Independent contractor, real estate.** A real estate salesperson who is a qualified real estate agent under the Internal Revenue Code of 1954, section 3508(b)(1) is an independent contractor. The Internal Revenue Code of 1954, section 3508(b)(1) is incorporated by reference as the standard to be used under this chapter. A real estate salesperson who is not a qualified real estate agent under that standard is nonetheless an independent contractor if all the following conditions are substantially met.

A. The salesperson is licensed to one broker and the cost of the license is paid by the salesperson.

B. The broker makes available to the salesperson office facilities and property listing, and assists the salesperson by giving advice and by cooperating in his or her endeavors.

C. The broker furnishes the salesperson with necessary business forms, stationery, cards, and instructs him or her in office procedures and business policies either verbally or by means of written instructions, such as sales manuals.

D. The salesperson agrees to work diligently for the broker and to conduct his or her business and regulate his or her habits so as to maintain and increase the good will and reputation of the broker.

E. The salesperson agrees not to sell for other brokers.

F. The salesperson provides his or her own transportation and pays all expenses incurred in the solicitation of business.

G. The salesperson generally reports to work daily but works no fixed number of hours.

H. Meetings are held in the broker's office on a regular basis, usually weekly, but attendance at these meetings is voluntary.

I. Sales are closed in the name of the broker.

J. The money is turned over to the broker who pays the salesperson commissions at periodic intervals.

K. The salesperson's success is primarily dependent on his or her own initiative and effort.

Subp. 3. **Independent contractor, securities.** A securities salesperson is an independent contractor if all the following conditions are substantially met.

A. The securities dealer engages the salesperson in the furtherance of the business.

B. The salesperson is licensed to a particular dealer.

C. The dealer furnishes the salesperson with desk space, telephone and telegraph facilities, market quotations, statistical and bookkeeping services, and clerical assistance.

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D. The salesperson agrees to work diligently for the dealer and to abide by all laws, rules, and regulations under which the dealer operates the business.

E. The salesperson is not required to work fixed hours.

F. The salesperson concludes sales in the name of the dealer and pays over the money to the dealer.

G. The salesperson is paid on a commission basis at periodic intervals.

H. Under certain circumstances, the salesperson may bear a part of the losses resulting from a transaction.

I. Sales meetings are held regularly, but attendance is voluntary.

J. The salesperson's income is primarily dependent on his or her own initiative and effort.

Subp. 4. **Employee.** A salesperson is an employee when all of the following criteria are substantially met.

A. the salesperson is paid a salary or guaranteed minimum wage;

B. the employer requires fixed hours of work;

C. the employer requires that nearly all work be done on the broker's or dealer's premises;

D. the employer requires attendance at employer's office at specific times;

E. the broker or dealer has the right to interrupt or set the order of services;

F. the employer provides instruction or training in how the salesperson approaches prospects, closes sales, and works on particular problems; and

G. the employer requires the salesperson to report on activities.

### 5222.0240 REGISTERED AND PRACTICAL NURSES.

Subpart 1. **Definition.** Registered nurses are persons licensed as such pursuant to Minnesota Statutes. Practical nurses are persons licensed as such pursuant to Minnesota Statutes.

Subp. 2. **Independent contractor.** A nurse is an independent contractor if:

A. The nurse holds himself or herself out to the public as exercising an independent calling requiring specialized skills.

B. The nurse has full discretion in administering his or her professional services. Full discretion is present even though the nurse may be subject to the supervision of the attending physician.

C. The nurse is retained full time by the purchaser and the work relationship between the purchaser and the nurse is expected to terminate when the job is completed.

D. The nurse is not retained full time by a purchaser and the nurse is available to others for private duty nursing.

Subp. 3. **Employee.** A nurse who works for a hospital, clinic, nursing home, public health agency, or as an office attendant for a private physician is an employee if all the following criteria are substantially met.

A. The nurse works full time on the regular staff of the firm.

B. The nurse works for a salary and follows prescribed routines during fixed hours when he or she is not available for private duty nursing.

C. The nurse's services are integrated into the employer's business.

D. The employer has the right to set the order of and supervise the services.

### 5222.0250 UNLICENSED "NURSES."

Nurses' aides, domestics, and other unlicensed individuals who continue to classify themselves as practical nurses are, in general, insufficiently trained or equipped to render professional or semi-professional "nursing." Their services are normally those expected of maids, servants, and domestics, for example, bathing the individual, combing the individual's hair, reading, arranging bedding and clothing, preparing or serving meals, and occasionally giving oral medication left in their custody. The status of these persons is determined pursuant to part 5222.0080, domestic service.

### 5222.0260 TAXICAB DRIVERS.

Subpart 1. **Definition.** Taxicab drivers are persons who offer fee for service auto transportation within a limited area.

Subp. 2. **Independent contractor.** A driver is an independent contractor if all of the following criteria are substantially met.

A. The driver owns and drives his or her own cab, or leases it on a flat rate basis and pays a specified rental on a daily, weekly, or similar time basis.

B. The driver is free to work the shift he or she chooses, and there is no control over when and where the driver works.

C. The driver's sole compensation is the fares and tips collected from patrons.

D. The driver is required to comply with government rules and regulations and with firm regulations that are meant to ensure proper care and handling of the cab.

E. The driver is not required to report his or her whereabouts and is not subject to instructions on where to seek patrons.

F. If the driver leases the cab, the lessor is interested only in receiving the cab rental and, in many cases, payment for gasoline and oil that the driver is required to buy from the lessor.

G. The opportunity for profit or risk of loss rests with the driver, not the lessor.

Subp. 3. **Employee.** A taxicab driver is an employee if all the following criteria are substantially met.

A. The employer exercises control over the driver while the driver is in possession of the cab.

B. The driver must work during specified hours or on assigned shifts, pick up passengers on call, and report his or her whereabouts periodically.

C. The driver must account for fares collected.

D. The employer requires that the driver perform the services personally.

E. The employer gives instructions on matters of appearance, behavior, manner of seeking patrons, routes, order of services, and time off from duty.

F. Payment is in the form of a salary or salary plus a percentage of fares.

G. The driver is required to report personally and regularly or furnish written reports.

H. There are no business expenses on the part of the driver.

I. Both parties have the right to terminate the relationship at any time.

J. There is no investment or opportunity for profit or risk of loss on the part of the driver.

#### **5222.0270 TIMBER FELLERS, BUCKERS, SKIDDERS, AND PROCESSORS.**

Subpart 1. **Definition.** Timber fellers employ chainsaws or other mechanical devices mounted on logging vehicles to fell trees. Trees so felled may either be delimbed at the site or subsequently at roadside landings.

Buckers cut trees into merchantable lengths, with either chainsaw or heavier machinery such as slashers, harvesters, and processors. These operations may also be conducted either at the felling site or at roadside. In either case the product is piled or otherwise accumulated to facilitate subsequent transportation.

Skidders or forwarders either drag logs or trees to roadside landings, or load and transport logs or shortwood (fuelwood or pulpwood) to similar destinations.

Timber harvesters and processors combine two or more of the operations described above.

Mechanical debarking and/or chipping may also be coordinated with skidding or forwarding operations.

Chips are usually blown into semi-trailer vans for delivery to mills for remanufacture or to furnaces for fuel.

Subp. 2. **Neutral factors.** Due to the nature of the work and certain customs in the field, the following factors are neutral: lack of fixed hours of work, payment on a piecework basis, ownership of small tools, and requirements that the product of the work be within overall specifications.

Subp. 3. **Independent contractor.** A feller, buckler, skidder, or processor is an independent contractor if all of the following criteria are substantially met.

A. The worker is granted timber rights to tracts of land and legally binds himself or herself to remove all or certain parts of the timber within specified times at set prices.

B. The worker bargains for "package" jobs which he or she will do by methods of his or her own choice subject to production specifications required by the contracting company.

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C. The worker is paid to obtain a result, which does not necessarily depend on his or her own personal services.

D. The worker is free to hire and direct others to do the work and the worker is responsible for expenses incurred in fulfilling the contract.

E. The worker supplies the necessary equipment and sometimes the tools used by the helpers.

F. The worker determines the working hours and rates of pay, and otherwise controls the helpers' working conditions.

G. The worker holds himself or herself out to the public as a contractor and sometimes holds several logging contracts at the same time.

H. The worker is in a position to make a profit or suffer a loss, depending on the management of helpers, the care of the tools and equipment, and the methods used for doing the work.

I. As long as the worker produces final results that measure up to specifications, there is no desire or legal right to interfere with the worker's methods.

Subp. 4. **Employee.** A feller, buckler, skidder, or processor is an employee if all of the following criteria are substantially met.

A. The feller, buckler, skidder, or processor is assigned specific portions of the area to be harvested, but the right to work in other portions is not given to him or her exclusively.

B. The company assigns a number of workers to each area. They are told the kind and size of trees to cut. Trees designated to be cut because of a conservation or sustained-yield program do not indicate employment.

C. The company foreman periodically inspects the work area to be harvested and, if not satisfied with the progress being made, replaces the workers with another crew.

D. The crews may be shifted from one work area to another to speed up operations and if a worker is ill or not doing satisfactory work the foreman may replace the worker.

E. The worker chooses his or her own hours of work, but is required to finish each work area within a certain time and to do so usually requires long and regular hours of work.

F. The worker may be paid on a piecework basis or by the cord, but generally the company will not pay for products that do not measure up to specifications. Keeping records of wages paid and hours worked is not indicative of employment if it is required only to ensure that the products may be shipped in interstate commerce.

### 5222.0280 SAWMILL OPERATORS.

Subpart 1. **Definition.** Sawmill operators manage sawmills. A sawmill is used to convert logs into lumber or other forest products. The mills may be stationary or portable. Moving the logs into position, the sawing operation itself, and the stacking or removal of the products often require the services of a crew of workers.

Subp. 2. **Independent contractor.** A sawmill operator is an independent contractor if all of the following criteria are substantially met.

A. The operator has a substantial investment because he or she owns all or part of the mill and equipment used to move logs, lumber, or other forest products.

B. The operator contracts to saw, or harvest and saw, timber at so much per thousand board feet. The operator may bind himself or herself by contract to complete the job within a set time or to produce a daily or weekly quota.

C. The work calls for independent thought and action based on business judgment, experience, and training.

D. The operator contracts to do a specific job, using his or her own methods. The only control over the work concerns attainment of an acceptable result.

E. The operator hires, pays, and directs his or her own crews.

F. The operator is not required to do the work personally, but is responsible for its being done.

G. The operator is in a position to lose or profit from management of the workers and care of the equipment.

H. The operator is free to work for others.

I. There is no restriction of activities so long as the sawmill turns out products that meet the overall specifications in the contract.

Subp. 3. **Employee.** A sawmill operator is an employee if all of the following criteria are substantially met.

A. The purchaser of the services pays the cost of running the mill, even though the operator may own the mill.

B. The operator may pick a crew to operate the mill, but the company pays them and can fire them for poor work.



- C. The company has the right to tell the operator what hours to work and require the operator to keep records of the amount produced and on hand daily.
- D. The mill is moved from one tract to another as the company requires.
- E. The operator may be paid a salary or pay may be computed on a piecework basis.
- F. The services are terminable by either party at any time.
- G. The operator has no business expenses nor opportunity for profit or risk of loss.
- H. The operator cannot work for others.

**5222.0290 TRUCK OWNER-DRIVERS.**

Subpart 1. **Definition.** A truck owner-driver is any individual, partnership, or corporation (hereinafter referred to as "individual") who owns or holds a vehicle as defined in subpart 2 under a bona fide lease and who leases that vehicle together with driver services to an entity which holds itself out to and does transport freight as a for-hire or private motor carrier.

Subp. 2. **Independent contractor.** In the trucking industry, an owner-operator of a vehicle that is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his or her truck, if each of the following factors are substantially present.

- A. The individual owns the equipment or holds it under a bona fide lease arrangement.
- B. The individual is responsible for the maintenance of the equipment.
- C. The individual bears the principal burden of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road.
- D. The individual is responsible for supplying the necessary personal services to operate the equipment.
- E. The individual's compensation is based on factors related to the work performed including a percentage of any schedule of rates or lawfully published tariff and not on the basis of the hours or time expended.
- F. The individual generally determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
- G. The individual enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

Subp. 3. **Employee.** An owner operator of a vehicle as defined in subpart 2 is an employee, not an independent contractor, while performing services in the operation of the individual's truck, if all of the following criteria are substantially met.

- A. The individual is paid compensation for his or her personal services:
  - (1) based solely on wage by the hour or a similar time unit that is not related to a specific job or freight movement;
  - (2) on a premium basis for services performed in excess of a specified amount of time; and
  - (3) from which FICA and income tax is withheld.
- B. The individual is treated as an employee by the firm with respect to fringe benefits offered to employees by the firm.
- C. The individual usually works defined hours.
- D. The employer requires that the individual must perform the work personally and cannot change drivers.
- E. The individual has no choice in the acceptance or rejection of a load.
- F. The individual and firm have no written contract; or, if there is a written contract, it does not specify the individual's relationship with the firm as being that of independent contractor.

**5222.0291 WASTE MATERIALS HAULERS.**

Part 5222.0290 applies to truck owner-drivers who meet the definition of part 5222.0290, subpart 1 except that they transport waste materials instead of freight.

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### 5222.0292 MESSENGERS/COURIERS.

Subpart 1. **Definition.** Messenger/couriers are vehicle drivers who deliver cargo for a company licensed as a local cartage carrier or courier service carrier under Minnesota Statutes, chapter 221.

Subp. 2. **Independent contractor.** A messenger/courier is an independent contractor if all of the following criteria are substantially met.

- A. The messenger/courier owns and drives his or her own vehicle.
- B. The messenger/courier is free to accept or reject jobs from a carrier and there is no control over when the individual works.
- C. The messenger/courier is compensated per delivery.
- D. All expenses are paid by the messenger/courier and the opportunity for profit or loss rests with him or her.
- E. The messenger/courier is responsible for the operating costs, including fuel, repairs, supplies, and vehicle insurance.
- F. The messenger/courier determines the details and means of performing the services, such as the selection of routes and the order of deliveries.
- G. The messenger/courier is responsible for the completion of a specific job and is liable for failure to complete the job.

Subp. 3. **Employee.** A messenger/courier is an employee if all of the following criteria are substantially met.

- A. The messenger/courier must work during specified hours or an assigned shift.
- B. Payment is on a salary or hourly basis rather than per delivery basis.
- C. The employing carrier reimburses the messenger/courier for all expenses.
- D. The employing carrier furnishes the delivery vehicle.
- E. There is no investment or opportunity for profit or risk of loss on the part of the messenger/courier.
- F. The employing carrier furnishes insurance for the vehicle used by the messenger/courier.

### 5222.0300 VARIETY ENTERTAINERS.

Subpart 1. **Definition.** A variety entertainer is a person who entertains and amuses audiences by means of acts or skits, dances, readings, feats of skill, songs, or comedy acts. The entertainer performs in the legitimate and burlesque theaters, movie houses, circuses, fairs, hotels, and night clubs.

Variety entertainers specialize in one or two types of acts. The more talented create and develop their own acts or routines and sometimes train others to help perform them. They often work in pairs or as members of troupes.

Subp. 2. **Neutral factors.** The status of a variety entertainer is not determined by the entertainer's entering into the form B contract of the American Federation of Musicians. This contract purports to establish an employer and employee relationship between the purchaser of the services and the entertainer. The actual relationship, rather than the terms of the contract, governs.

Subp. 3. **Independent contractor.** A variety entertainer is an independent contractor if all of the following criteria are substantially met.

- A. The entertainer performs acts or routines as a series of short-term engagements for a number of different operators of theaters, night clubs, restaurants, and similar establishments.
- B. The entertainer's contract, which is usually obtained through booking agents or personal representatives, specifies only the time, place, and duration of each engagement, and the pay.
- C. The entertainer furnishes his or her own music arrangements, stage props, and dress.
- D. The entertainer's act is not an integral part of another's business.
- E. The entertainer maintains a high degree of individuality and establishes a reputation based on the acceptance by the audiences for which the entertainer performs.

Subp. 4. **Employee.** A variety entertainer is an employee when all of the following criteria are substantially met.

- A. The entertainer is subject to supervision over the number, time, place, and length of rehearsals and performances, and as to duty and behavior, and is bound by rules and regulations to the purchaser of the services.
- B. The entertainer's variety acts may undergo considerable change in order to suit the employer's purpose. It may be shortened, lengthened, or moved from one spot to another to weld it, with others, into one complete show or to coordinate it with other activities. In that case, individuality of the performer is subordinated to the purpose of enhancing the reputation of the purchaser of the services.
- C. The entertainer's performance becomes an integral part of another's business.

- D. The entertainer is engaged on a long-term basis.
- E. The entertainer may not work for others.
- F. The entertainer has no opportunity for profit or risk of loss, must frequently work with others, and can be shifted from one place to another.
- G. The entertainer can be discharged at any time.
- H. The entertainer cannot hire helpers or substitutes.

**5222.0310 SPORTS OFFICIALS.**

Subpart 1. **Definition.** A sports official is an individual engaged to referee games of sport such as basketball, hockey, or football where the level of competition requires the sports official to be a member of or certified by an organization whose purpose is to maintain minimum standards and qualifications of sports officials.

Subp. 2. **Independent contractor.** A sports official is an independent contractor if all the following conditions are substantially met.

- A. There is a written contract between the sports official and the party or association engaging the services of the sports official that states specifically that the sports official is an independent contractor.
- B. Payment to the sports official is for a set fee for each game officiated.
- C. The official is free under the terms of the contract to accept or reject assignments of any game.
- D. The sports official is not limited to exclusively officiating with the party engaging the services as a sports official.

Subp. 3. **Employee.** A sports official is an employee if all of the following criteria are substantially met.

- A. The official is paid on an hourly, weekly, or similar time basis.
- B. The official must work at the times and places designated by the purchaser of the official's services, and is not free to reject assignments.
- C. The official is not free to sell his or her services to other parties while working for the purchaser.
- D. The relationship is terminable at will without any liability to the official.

**5222.0311 JOCKEYS.**

Subpart 1. **Definition.** A jockey is a person who is licensed under Minnesota Statutes, chapter 240 to ride race horses for compensation as a jockey or apprentice jockey.

Subp. 2. **Independent contractor.** A jockey is an independent contractor with respect to the racetrack, trainer, and horse owner if all of the following criteria are substantially met.

- A. Arrangements for rides are made by the jockey or by an agent of the jockey who receives a commission from the jockey.
- B. The jockey is free to ride the horses of any stable.
- C. The jockey is free to accept or reject a call.
- D. The jockey provides his or her own saddle.
- E. The trainer instructs the jockey regarding the nature of the mount, the setup of the race, and the trainer's expectations of the running of the race. The jockey is free to disregard the instructions of the trainer, and may decide the route to be taken, the rate of speed of the horse, and similar matters regarding the running of the race.
- F. Payment is a fee paid on a per-race basis from the horseperson's account of the racetrack.

Subp. 3. **Employee.** A jockey is an employee of the trainer if all of the following criteria are substantially met.

- A. The jockey rides only for the employing trainer or the jockey rides for other trainers only with the permission of the employing trainer.
- B. The jockey is not free to reject the employing trainer's call.
- C. The trainer provides or pays for the jockey's saddle.

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D. The jockey is not free to disregard the instructions of the trainer regarding the running of the race except for safety reasons.

E. The jockey is paid a salary or wage by the trainer on a time rather than per-race basis; compensation usually includes room and board, and the wage may be paid from the horseperson's account at the racetrack.

### 5222.0312 TRAINERS.

Subpart 1. **Definition.** A trainer is a person who is licensed as a trainer under Minnesota Statutes, chapter 240.

Subp. 2. **Independent contractor.** A trainer is an independent contractor with respect to the racetrack and to the owners if all of the following criteria are substantially met.

A. The trainer sets a fee which covers the daily fee, and bills the owner for the day pay and any additional supplies or services incurred in the care of the horse.

B. Tack, feed, board, and all supplies necessary for the ordinary care of the horse are provided by the trainer.

C. The trainer has a substantial capital investment in tack, equipment, and supplies.

D. The trainer makes all decisions regarding management of the horse while the horse is at the trainer's stable. If the trainer disagrees with instructions of the owner, the trainer is free to tell the owner to remove the horse from the trainer's care, and the owner must comply.

E. The trainer is free to stable and train the horses of other owners.

Subp. 3. **Employee.** A trainer is an employee of an owner if all the following criteria are substantially met.

A. The trainer is paid on a salary, wage, or similar time basis.

B. Tack, feed, board, equipment, and supplies for the care of the horse are provided by the owner.

C. The stables are owned or operated by the owner of the horses.

D. The trainer must comply with instructions of the owner regarding management of the horse, although the owner generally relies on the expertise of the trainer.

E. The trainer may stable and train the horses of others only with the permission of the employing owner.

F. The trainer's hours of work are set by the owner of the horse.

### 5222.0320 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

Parts 5222.0330 and 5222.0340 shall be used to determine if an individual is an independent contractor or an employee where the occupation is not defined in parts 5222.0020 to 5222.0312. Additionally, these parts provide interpretative guidance where the occupation is defined but the safe harbor criteria for that occupation are not all substantially met. Where some but not all of the safe harbor criteria are substantially met, those criteria which are substantially met shall be considered evidence of that status, and shall control where a conflicting result for that criterion is indicated by parts 5222.0330 to 5222.0340. Nothing contained in this chapter is intended to prevent or prohibit an insurer from seeking a reimbursement agreement from an insured where an insured disputes the insurer's underwriting or audit judgment on the application of this chapter for purposes of determining premium.

### 5222.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

Subpart 1. **Generally.** The most important factor in determining whether a person is an independent contractor is the degree of control which the purported employer exerts over the manner and method of performing the work contracted. The more control there is the more likely the person is an employee and not an independent contractor. Subparts 2 to 14 describe criteria for determining if there is control over the method of performing or executing services. The total circumstances, including the practices and the customs of the industry, must be considered to determine if control is present.

Subp. 2. **Authority over individual's assistants.** Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistants' work.

Subp. 3. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail, or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, do not evince control.

Subp. 4. **Oral or written reports.** Control is indicated if regular oral or written reports relating to the method in which the services

are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

Subp. 5. **Place of work.** Control is indicated if work which could be done elsewhere is done on the employing units premises, especially when the work could be done elsewhere. When work is done off the premises, freedom from control is indicated except in occupations where the services are necessarily performed away from the premises of the employing unit.

Subp. 6. **Personal performance.** Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control is indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

Subp. 7. **Existence of continuing relationship.** The existence of a continuing relationship between an individual and the person for whom he or she performs services indicates the existence of an employment relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

Subp. 8. **Set hours of work.** The establishment of set hours of work by the employing unit indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times indicates control.

Subp. 9. **Training.** Training of an individual by an experienced employee, by required attendance at meetings, and by other methods, indicates control, especially if the training is given periodically or at frequent intervals.

Subp. 10. **Amount of time.** Control is indicated where the worker must devote full time to the activity. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

Subp. 11. **Simultaneous contracts.** If an individual works for a number of persons or firms at the same time, lack of control is indicated.

Subp. 12. **Tools and materials.** The furnishing of tools, materials, and supplies by the employing unit indicates control over the worker. When the worker furnishes these items, lack of control is indicated. Lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

Subp. 13. **Expense reimbursement.** Payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses.

Subp. 14. **Satisfying requirements of regulatory and licensing agencies.** Control is not indicated where an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies.

#### **5222.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.**

Subpart 1. **Factors.** Among the factors to be considered, in addition to factors of control, when determining if services are those of an independent contractor or employee are those listed in subparts 2 to 9.

Subp. 2. **Right to discharge.** The right to discharge exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to discharge. Restrictions on the right to discharge because of a contract with a labor union or with other entities are not relevant for purposes of this subpart.

Subp. 3. **Availability to public.** If an individual makes services available to the general public on a continuing basis, independent contractor status is indicated. An individual's services are offered to the public by, among other things:

- A. having an office and assistants;

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- B. displaying a sign in front of a place of business;
- C. holding a business license;
- D. having a listing in a business directory or a business listing in a telephone directory; or
- E. advertising in a newspaper, trade journal, or magazine.

Subp. 4. **Compensation on job basis.** Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The granting of a drawing account at stated intervals with no requirement for repayment of the excess drawn over commissions earned or the guarantee of a minimum salary indicates an employment relationship.

Subp. 5. **Realization of profit or loss.** Independent contractor status is indicated where an individual is in a position to realize a profit or suffer a loss as a result of his or her services. Opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss. An opportunity for profit or loss is indicated by the following factors, among others:

- A. hire, direct, and pay assistants;
- B. provide own office, equipment, materials, or other facilities for doing the work;
- C. continuing and recurring financial liabilities or obligations, relating to the work;
- D. profit or loss in the work depends upon the relationship of receipts to expenditures;
- E. expenses incurred in connection with the work are paid by the individual;
- F. specific jobs are performed for prices agreed upon in advance; and

G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

Subp. 6. **Termination.** The worker's right to terminate the working relationship with the purported employer at will and without incurring liability for noncompletion indicates employment. A requirement to provide notice of termination for some period in advance of the termination is not relevant for purposes of this subpart. Independent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job.

Subp. 7. **Substantial investment.** A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation. A substantial expenditure of time or money for an individual's education is not indicative of an independent contractor status.

Subp. 8. **Responsibility.** If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated.

Subp. 9. **Services fundamental to business.** Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists.

## ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

### State Board of Education Department of Education Management Effectiveness Division

#### Adopted Rules Relating to Staffing Requirements for Principals; Clarification on Out-of-State Administrative Licensure

The rules proposed and published at *State Register*, Volume 9, Number 42, pages 2328-2330, April 15, 1985 (9 S.R. 2328) are adopted with the following modifications:

##### Rules as Adopted

##### 3500.0605 STAFFING REQUIREMENTS FOR PRINCIPALS.

Subpart 1. **Licensed principal required.** Every elementary, middle, and secondary school must be under the immediate direction of an appropriately licensed principal.

J. The commissioner of education may grant to a school district an assignment exemption from the requirements of items A, B, and D to F and G, based on demonstrated hardship. Such hardship shall consist of unique school district situations involving geography, sparsity of population, distance, and enrollment problems. The exemption shall be granted for a school year or a portion of a school year. A request for the hardship assignment exemption must be submitted by the superintendent to the commissioner of education with full documentation detailing the problems involved in full compliance and becomes effective upon review and approval by the State Board of Education.

REPEALER. Minnesota Rule, part 3510.0700 is repealed. Minnesota Rules, parts 3500.1400, subpart 1; 3500.1800, subpart 1; and 3500.3700, subpart 1; and 3510.0700 are repealed effective September 1, 1987.

### Department of Public Safety

#### Adopted Rules Relating to License Revocation for Alcohol- and Controlled-Substance-Related Incidents

The rules proposed and published at *State Register*, Volume 10, Number 10, pages 580-591, September 2, 1985 (10 S.R. 580) are adopted with the following modifications:

##### Rules as Adopted

##### 7503.0100 DEFINITIONS.

Subp. 5. **Chemical dependency treatment.** "Chemical dependency treatment" is treatment for chemical dependency by a facility in a program licensed or approved by the state of Minnesota Department of Human Services under part 9530.2800 or 9530.5300, treatment by in a comparable facility program licensed or approved by another state, or treatment by in a hospital-based treatment facility program.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.

## ADOPTED RULES

### 7503.0300 SUSPENSION PERIODS.

Subpart 1. **Suspension period imposed for revocable offenses.** The commissioner shall suspend the driver's license or driving privilege of a person who commits an offense for which mandatory revocation of a driver's license is required upon conviction for the revocation period that is imposed for conviction of the offense in Minnesota, up to a maximum period of one year. However, if the suspension is based on a criminal charge and the commissioner receives notice that the criminal charge was dismissed or that the person was acquitted of the criminal charge, the commissioner shall terminate the suspension period.

### 7503.0700 LICENSE REVOCATION FOR ALCOHOL- AND CONTROLLED-SUBSTANCE-RELATED INCIDENTS.

Subp. 2. ~~Following a chemical test for intoxication or refusal to take a chemical test for intoxication.~~ The commissioner shall revoke the driver's license or the nonresident driving privilege of any person who violates Minnesota Statutes, section 169.123.

### 7503.0800 REVOCATION PERIODS.

Subp. 2. **Criminal vehicular operation.** The commissioner shall revoke the driver's license or driving privilege of any person convicted under Minnesota Statutes, section 609.21, subdivision 1, clause (1) or (2), ~~or subdivision 2, clause (1) or (2) or (3)~~ for a period of five years from the date the conviction is reported to the commissioner. The commissioner shall revoke the driver's license or driving privilege of any person convicted under Minnesota Statutes, section 609.21, subdivision 2, clause (2) or (3) for a period of three years from the date the conviction is reported to the commissioner.

Subp. 7. **Terminating revocation periods following completion of alcohol problem assessment action.** The commissioner shall terminate a revocation period in accordance with Minnesota Statutes, section 169.123, subdivision 10. The amount of the termination shall be 30 days or the length of time remaining in the revocation period, whichever is shorter. Termination of the revocation period under Minnesota Statutes, section 169.123, subdivision 10, shall not apply to persons with more than one alcohol- or controlled-substance-related incident on record or to persons who have outstanding licensure requirements, such as completion of a special review or conditions of licensure imposed by the commissioner following a special review. Termination of the revocation period applies only in the following circumstances.

B. ~~A person may apply for early reinstatement pursuant to Minnesota Statutes, section 169.123, subdivision 10, when a driver improvement course, an alcohol awareness program, or chemical dependency treatment is completed as required by an alcohol problem assessment. An application to the commissioner for early reinstatement shall be made in writing and accompanied by documents showing attendance and completion of a driver improvement clinic, counseling sessions, or treatment as alcohol problem assessment. An application to the commissioner for early reinstatement shall be made in writing and accompanied by documents showing attendance and completion of a driver improvement clinic, counseling sessions, or treatment as required by a court or by the commissioner. When notified that a driver has undergone an alcohol problem assessment and that the driver is required to complete a driver improvement course, alcohol awareness program, or treatment for chemical dependency, the commissioner shall terminate the revocation period upon receipt of the person's completed application for early reinstatement. The application must be made in writing and must be accompanied by documents showing attendance at the required driver improvement course, alcohol awareness program, or chemical dependency treatment, and the anticipated completion date of the course, program, or treatment. Within ten days of the completion of the driver improvement course, alcohol awareness program, or chemical dependency treatment, the driver shall provide to the department a written document from the course, program, or treatment attesting that the person has completed it. If the driver fails to notify the department within the ten-day period, the commissioner shall revoke the driver's license for a period of 30 days or for the remainder of the revocation period, whichever is shorter.~~

Subp. 8. ~~**Reducing revocation period following guilty plea.** If a person whose driver's license has been revoked pursuant to Minnesota Statutes, section 169.123, and who has not previously been convicted under Minnesota Statutes, section 169.121, or whose driver's license has not previously been revoked under Minnesota Statutes, section 169.123, pleads guilty at the first opportunity and is convicted of a violation of Minnesota Statutes, section 169.121, the commissioner shall change the period of revocation to 30 days from the date of the conviction or to the length of time remaining in the revocation period, whichever is shorter.~~

~~If the guilty plea or conviction under Minnesota Statutes, section 169.121, arising out of the incident is withdrawn or vacated, the commissioner shall reinstate the original revocation period.~~

### 7503.0900 NOTICE OF REVOCATION AND ISSUANCE OF TEMPORARY DRIVER'S LICENSES.

Subp. 2. **Notice served by the court.** Notice of license revocation is served by the court when a person is convicted of violating Minnesota Statutes, section 169.121. The commissioner shall provide forms to the court for serving the notice of revocation and the issuance of a temporary license. These forms must contain space for the following information and may contain other information as the commissioner deems appropriate:

1. a statement indicating that no temporary driver's license was issued; if the person did not have valid driving privileges at the time of the incident;



**7503.1300 LICENSE CANCELLATION AND DENIAL FOLLOWING ALCOHOL- OR CONTROLLED-SUBSTANCE-RELATED INCIDENTS.**

Subp. 3. **Consumption of alcohol or a controlled substance after completing ~~chemical dependency~~ rehabilitation.** The commissioner shall cancel and deny the driver's license or driving privilege of any person whose license or privilege has been reinstated after completion of rehabilitation ~~for chemical dependency~~ when the commissioner has sufficient cause to believe that the person has consumed alcohol or a controlled substance since the date of reinstatement.

**7503.1600 REINSTATEMENT FOLLOWING LICENSE CANCELLATION.**

The commissioner shall deny the application for a driver's license, including the application for a limited license, to any person whose license has been canceled unless the following conditions have been satisfied:

C. If the incident is the third alcohol- or controlled-substance-related incident within a five-year period, or the third such incident on record and a special review was conducted after the second incident, or if the person has four or more such incidents on record, the person must complete rehabilitation ~~for chemical dependency~~.

**7503.1700 CHEMICAL DEPENDENCY REHABILITATION.**

Subpart 1. **When applicable.** A person must complete rehabilitation ~~for chemical dependency~~ when the person's driver's license or driving privileges have been canceled and denied following involvement in three or more alcohol- or controlled-substance-related incidents within five years, when a special review has been previously conducted and there are three alcohol- or controlled-substance-related incidents on record, or when there are four or more incidents on record.

Subp. 2. **Rehabilitation requirements.** The person must meet the following requirements in order to complete rehabilitation ~~for chemical dependency~~:

A. The person must successfully complete treatment for chemical dependency, ~~including any aftercare program recommended by the treating facility~~ and submit evidence of chemical dependency treatment to the commissioner.

B. The person must ~~attend an~~ participate in a generally recognized, ongoing ~~recovery~~ chemical awareness program ~~such as Alcoholics Anonymous~~ and submit evidence of attendance to the commissioner.

D. The person must appear for a ~~chemical dependency~~ rehabilitation interview at a driver evaluation office of the Minnesota Department of Public Safety.

Subp. 3. **Evidence of chemical dependency treatment.** Evidence of chemical dependency treatment submitted to the commissioner shall consist of written material supplied by the treating ~~facility~~ program showing the starting and ending dates of treatment and completion of primary and post-primary treatment, including a discharge summary with a prognosis and any recommended aftercare program. If the prognosis is not favorable or if the person fails to complete an aftercare program recommended by the treating ~~facility~~ program, the commissioner shall reinstate the person's driver's license and driving privilege only following completion of an abstinence period of one year in addition to the abstinence periods prescribed in part 7503.1700, subpart 5.

Subp. 4. **Abstinence documentation.** Every person applying for reinstatement after ~~chemical dependency~~ rehabilitation must sign a statement acknowledging the person's awareness that abstinence from the use of alcohol and controlled substances is a condition of licensure. The commissioner shall provide a form to the person which contains the acknowledgment as well as an advisory that the commissioner shall cancel and deny the driver's license and driving privilege of the person if the commissioner has sufficient cause to believe that the person has consumed alcohol or a controlled substance, whether or not the circumstances involve the operation of a motor vehicle. The restriction must be placed on the person's driver's license and driving record.

To substantiate abstinence the person must sign a statement, on the form provided by the commissioner, attesting to the date on which alcohol or a controlled substance was last consumed. The person also must furnish to the commissioner at least five supporting statements from unrelated persons ~~to the commissioner~~. The statements must be signed and include the full name, address, and telephone number of the person filing the statement, information as to how often they will be in contact with the person, what relationship they hold to the person, the period of time that the person can attest to abstinence, and a pledge to report promptly to the commissioner in writing any use of alcohol or a controlled substance by the person.

Subp. 5. **Abstinence periods.** Evidence of abstinence furnished by the person must substantiate a period of abstinence as provided in this chapter, and rehabilitation ~~for chemical dependency~~ is not complete if the commissioner has sufficient cause to believe that the person has not abstained from the use of alcohol or a controlled substance for the period claimed.

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# ADOPTED RULES

For a person who has not previously undergone rehabilitation for chemical dependency, The following periods of abstinence periods shall apply:

Number of alcohol or	Abstinence controlled-substance-related incidents	period
3 or 4		1 year
5		2 years
6		3 years
7 or more		4 years

A. for a person who has not previously undergone rehabilitation, one year; or

B. for a person who has once completed chemical dependency rehabilitation, the following periods apply: three years.

Number of alcohol or	Abstinence controlled-substance-related incidents	period
3 or 4		2 years
5		4 years
6		6 years
7 or more		8 years

If the person is incarcerated or lives in a controlled environment, such as a halfway house, or if the person is being administered medication for alcoholism, such as Antabuse, the length of time the person is under these conditions shall count as half-time towards completion of the abstinence abstinence periods required above.

Subp. 6. **Consequences of using alcohol or a controlled substance after completing rehabilitation.** The commissioner shall cancel and deny the driver's license and driving privilege of any person when there is sufficient cause to believe that the person has consumed alcohol or a controlled substance after completing rehabilitation. The commissioner shall not reinstate the driver's license or driving privilege of any person who has been reinstated following a second rehabilitation for chemical dependency if the commissioner has sufficient cause to believe that the person has consumed alcohol or a controlled substance since the date that the second rehabilitation was completed. This subpart does not apply to the consumption of a controlled substance in accordance with a medical prescription.

Subp. 7. **Chemical dependency Rehabilitation interview.** A person seeking reinstatement following rehabilitation for chemical dependency shall appear in person for an interview at a driver evaluation office of the Minnesota Department of Public Safety for the purpose of discussing the effectiveness of rehabilitation on the person's driving ability and problem of chemical abuse. The person shall schedule the interview in advance and must provide the commissioner with all written material required for chemical dependency rehabilitation under this chapter before the date on which the interview is scheduled.

## 7503.1800 ISSUANCE OF LIMITED LICENSES.

Subp. 2. **Persons not eligible for a limited license.** The commissioner shall not issue a limited license to any person whose driver's license or driving privilege has been canceled and denied under Minnesota Statutes, section 171.14 or denied under Minnesota Statutes, section 171.04, subdivision 8. No limited license shall be issued to any person incurring a second alcohol- or controlled-substance-related incident within five years or to any person with three alcohol- or controlled-substance-related incidents on record unless one-half of the revocation period has expired, except that licenses shall be issued as required by Minnesota Statutes, section 171.30, subdivision 3, to class A or class B license holders authorizing the person to drive vehicles whose operation is permitted only under a class A or class B license when such a license has been suspended under Minnesota Statutes, section 171.18, or revoked under Minnesota Statutes, section 171.17, for a violation of the Highway Traffic Regulation Act committed in a private passenger vehicle.

Subp. 3. **Conditions of issuance of a limited license.** Before a limited license may be issued the following conditions must be satisfied:

D. The person must appear personally or may appear, by telephone, or by mail at a driver evaluation office of the Department of Public Safety to request a limited license, except that a person who has two alcohol- or controlled-substance-related incidents within five years, or three such incidents on record must appear personally to request a limited license.

E. The person must demonstrate a need for a limited license. A limited license must be issued as needed for employment or attendance at chemical dependency treatment, counseling programs, or post-secondary education. A person requesting a limited license may demonstrate the need for a limited license using letters from the person's employer, proof of attendance at a chemical dependency treatment or counseling program, or proof of attendance at a post-secondary institution of education. The commissioner shall consider the particular circumstances and needs of the individual before issuing a limited license.

The commissioner shall waive items A, B, and C if the person has filed a petition for judicial review in the appropriate court and has furnished a copy of the petition to the commissioner. If the revocation is sustained on judicial review, the requirements must be met prior to reinstatement of driving privileges.

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## OFFICIAL NOTICES

If a limited license is issued, the conditions need not be repeated when seeking reinstatement, but any additional conditions must be satisfied.

### 7503.2000 ALCOHOL PROBLEM ASSESSMENTS REQUIRED BY THE COMMISSIONER.

Subpart 1. **Alcohol problem assessment required after 0.07 test.** When an evidentiary test administered under authority of Minnesota Statutes, section 169.123 discloses an alcohol concentration of 0.07 percent or more, the result must be reported to the commissioner. If a second test result of 0.07 percent or more occurs within two years, the commissioner shall require the person to appear for an alcohol problem assessment. The commissioner shall notify the person by first class mail that the assessment is required.

### 7503.2100 SPECIAL REVIEW.

Subp. 2. **Special review action.** The commissioner shall determine at a special review whether the person must complete a driver improvement course, an alcohol awareness program, or chemical dependency treatment. If the action is not completed by the deadline established at the special review, the commissioner shall cancel ~~and deny~~ the person's driver's license and driving privilege under Minnesota Statutes, section 171.13 until the action has been completed.

### 7503.2200 CHEMICAL ABUSE REVIEW PANEL.

Subpart 1. **Establishment and composition.** A chemical abuse review panel is established to review the type of chemical dependency treatment imposed by the commissioner or a diagnosis of chemical abuse accepted by the commissioner arising from an alcohol problem assessment ~~or~~ a special review, or rehabilitation. Members of the panel shall be certified chemical dependency counselors or other health care professionals experienced in the area of chemical abuse and shall be selected by the commissioner based on the ~~recommendations~~ recommendation of the Department of Human Services.

Subp. 2. **Procedure.** Applications for review by the chemical abuse review panel will be governed by the following procedures:

A. A request for review by the chemical abuse review panel must be submitted to the commissioner in writing within 30 days from the date of the special review or alcohol problem assessment that is the subject of the person's complaint. ~~No personal appearance will be granted before the chemical abuse review panel or within 30 days of the receipt of the order of cancellation and denial giving rise to rehabilitation. No personal appearance will be granted before the chemical abuse review panel.~~

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## OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

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### Board of Animal Health

#### Special Board Meeting

A Quarterly Meeting of the Board of Animal Health has been scheduled for Friday, January 31, 1986 at the Board of Animal Health offices, St. Paul, MN at 9:30 a.m.

Information about this meeting may be obtained by calling the Board office at 612-296-5000.

Dr. Thomas J. Hagerty  
Executive Secretary

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## **Charitable Gambling Control Board**

### **Outside Opinion Sought Regarding Proposed Rules Governing Lawful Gambling and the Distribution of Lawful Gambling Equipment**

Notice is hereby given that the Charitable Gambling Control Board is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing lawful gambling and the distribution of lawful gambling equipment in the area of a compensation schedule for the conduct of lawful gambling and to modify existing rules. The promulgation of these rules is authorized by Laws of Minnesota 1984, chapter 502, article 12, section 7, subdivision 4, codified as Minnesota Statutes 349.151, subdivision 4, which requires the agency to license organizations and suppliers, collect taxes, receive reports from and inspect records of organizations and suppliers, register gambling equipment, provide for posting of rules of play and odds and/or house percentage on each form of lawful gambling, and otherwise regulate the conduct of lawful gambling in Minnesota.

Small businesses involved in lawful gambling or distributing lawful gambling equipment are advised that they may be impacted by rules adopted by the Charitable Gambling Control Board in that the rules will provide for license fees, record keeping and reporting, and other procedures and requirements to which small businesses may have to adhere.

The Charitable Gambling Control Board requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Roger Franke  
Charitable Gambling Control Board  
1821 University Avenue, Room N-475  
St. Paul, MN 55104-3383

Oral statements will be received during regular business hours over the telephone at 612/642-0555 and in person at the above address.

All statements of information and comment will be accepted through February 3, 1986. Any written material received by the Charitable Gambling Control Board will become part of the record in the event that the rules are promulgated.

Roger Franke

## **Metropolitan Council**

### **Public Hearing: Aviation Chapter of the Metropolitan Development Guide**

The Metropolitan Systems Committee of the Metropolitan Council will hold a public hearing on Tuesday, January 21, 1986, at 7:00 p.m. in the Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, to receive public comment on the updated Aviation Chapter of the *Metropolitan Development Guide*.

The Minnesota Legislature has charged the Metropolitan Council with distinct responsibilities for aviation planning in the Twin Cities Metropolitan Area. The primary charge is to "prepare and adopt . . . a comprehensive development guide for the Metropolitan Area" that "shall recognize and encompass physical, social or economic needs of the Metropolitan Area and those future developments which will have an impact on the entire area including . . . the necessity for and location of airports . . ." (Minn. Stat. Ch. 473.145, 1976).

The Aviation Chapter of the *Metropolitan Development Guide* replaces the version of the document initially adopted in 1978 and amended in 1983. It details aviation goals, policies, guidelines, and a long-range aviation system plan to support the Metropolitan Development and Investment Framework. The Framework represents the Council's approach to guiding development and change in the region. The Aviation Chapter is to be used as a statement of the direction that the Twin Cities metropolitan aviation investments are to take between now and the year 2003. It is also to serve as a guide to develop more detailed studies, aviation facility projects, implementation programs and coordination efforts. The Metropolitan Council will use this chapter as its guide in reviewing airport plans and related referral proposals.

All interested persons are encouraged to attend the hearing and offer comments. People may register to speak in advance by contacting Lucy Thompson at 291-6521. Questions about the Guide Chapter should be directed to Chauncey Case of the Council's Transportation Planning staff at 291-6342. Copies of the draft Chapter are available free of charge beginning December 16, 1985,

from the Council's Communications Department at 291-6464. Copies are also available for public inspection beginning December 16 at the following locations:

Metropolitan Council Library  
300 Metro Square Building  
St. Paul, Minnesota 55101

Minneapolis Public Library  
Government Documents Room  
300 Nicollet Mall  
Minneapolis, Minnesota 55102

Dakota County Library—Eagan Branch  
1340 Wescott Rd.  
Eagan, Minnesota 55123

Hennepin County Library—Southdale Branch  
7001 York Avenue  
Roseville, Minnesota 55435

## **Metropolitan Council**

### **Review Schedule: Adoption of the Aviation Chapter of the Metropolitan Development Guide**

The Minnesota Legislature has charged the Metropolitan Council with distinct responsibilities for aviation planning in the Twin Cities Metropolitan Area. The primary charge is to "prepare and adopt . . . a comprehensive development guide for the Metropolitan Area" that "shall recognize and encompass physical, social or economic needs of the Metropolitan Area and those future developments which will have an impact on the entire area including . . . the necessity for and location of airports . . ." (Minn. Stat. Ch.473.145, 1976).

The Aviation Chapter of the *Metropolitan Development Guide* replaces the version of the document initially adopted in 1978 and amended in 1983. It details aviation goals, policies, guidelines, and a long-range aviation system plan to support the Metropolitan Development and Investment Framework. The Framework represents the Council's approach to guiding development and change in the region. The Aviation Chapter is to be used as a statement of the direction that the Twin Cities metropolitan aviation investments are to take between now and the year 2003. It is also to serve as a guide to develop more detailed studies, aviation facility projects, implementation programs and coordination efforts. The Metropolitan Council will use this chapter as its guide in reviewing airport plans and related referral proposals.

The following is a tentative schedule for review of the Aviation Guide Chapter:

December 5, 1985	Metropolitan Council approves draft plan for public hearing and sets public hearing date.
January 7/9, 1986	Tentative public information meeting dates.
January 21, 1986	Public hearing.
February 5, 1986	Hearing record closes.
February 24, 1986	Metropolitan Systems Committee reviews hearing report and recommends adoption of revised Aviation Guide Chapter.
March 13, 1986	Metropolitan Council adopts Aviation Guide Chapter.

This schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have questions regarding the schedule or Aviation Guide Chapter revision, call Chauncey Case of the Council's Transportation Planning staff at 291-6342.

## **Office of the Secretary of State**

### **Vacancies in Multi-Member State Agencies**

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is January 14, 1986.

PHYSICIAN ASSISTANT ADVISORY COUNCIL has 7 vacancies open for the following members: a) 2 public members; b) 3 physician assistants; c) licensed physicians (one of whom must be a representative of the Board of Medical Examiners). Members are appointed by the Commissioner of Health subject to the approval of the Board of Medical Examiners. The council shall advise the Board of Medical Examiners (BME) regarding physician assistant registration standards; advise the BME regarding complaint/discipline process; provide for distribution of information regarding physician assistant standards; review applications/recommend applicants for registration or re-registration; receive and process complaints; perform disciplinary investigations and other duties as

## OFFICIAL NOTICES

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directed by the Board of Medical Examiners. Quarterly meetings. Members receive \$35 per diem plus expenses. For specific information contact the Physician Assistant Advisory Council, Dept. of Health, 717 Delaware St., S.E., Mpls. 55440; (612) 623-5443.

### Department of Transportation

#### Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed Under Minn. Stat. § 169.825, Order No. 70765

Whereas, the Commissioner of Transportation has made his Order No. 68884 as amended by Orders Nos. 69226, 69269, 69270, 69344, 69353, 69595, 69770, 69796, 70006, 70031, 70152, 70455, 70520, 70580, 70652, 70698, 70747, and 70749 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.825, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 68884 is amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

##### CITY STREETS

- |                |  |
|----------------|--|
| South St. Paul | —John Carrol Boulevard from T.H. 56 (Concord Street) to Stockyards Road. (12 Month.) |
|                | —Stockyards Road from John Carrol Boulevard south to dead end. (12 Month.)           |
| LeSueur        | —Main Street from South Corporate Limits to Ferry Street. (12 Month.)                |
|                | —Ferry Street from Main Street to Second Street. (12 Month.)                         |
|                | —Second Street from Ferry Street to Bridge Street. (12 Month.)                       |

December 13, 1985

Richard P. Braun  
Commissioner

### Department of Transportation

#### Petition of the County of Winona for a Variance from State Aid Standards for Roadway Width

Notice is hereby given that the County Board of Winona County has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a resurfacing project on County State Aid Highway 44 between the junction of Trunk Highway 61 in Winona and a point 1.5 miles south.

The request for a variance from Minnesota Rules for State Aid Operations § 8820.9910 adopted to Minnesota Statutes Chapter 161 and 162 so as to permit a roadway width of 28 feet instead of the required 30 foot width.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

December 10, 1985

Richard P. Braun  
Commissioner of Transportation

# STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

## Department of Administration Procurement Division

### Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
79-000-51693	Purchase of Engineering Printers	Transportation	Golden Valley, N. St. Paul	Contact buyer
67-190-11252	Xerox Ethernet Network—Lease/Purchase	Revenue	St. Paul	Contact buyer
27-153-48284-3772	College Catalog 86-88	N. Hennepin Community College	Minneapolis	Contact buyer
21-200-11930-4676	Area Office Envelope	Jobs & Training	St. Paul	Contact buyer
79-000-50604	Drafting Chairs	Transportation	Minneapolis	Contact buyer
29-004-07059	Riding Lawn Tractor	Natural Resources	Luverne	Contact buyer
26-071-16026— Rebid	Heat Sealing System	Mankato State University	Minneapolis	Contact buyer
12-900-89587	Purchase of Copy Duplicating System	Health	Minneapolis	Contact buyer
12-900-89586	Purchase of Duplicating System	Health	Minneapolis	Contact buyer
Contract—Rebid	Photographic Film Processing (Amateur/Custom)	Various	Various	\$7,000-9,000
22-400-01034- 4864	Catalog Envelope	Energy & Economic Development	St. Paul	Contact buyer
27-151-47283-4810	College Catalog	Metropolitan Community College	Minneapolis	Contact buyer
02-410-48158	Printer Accessories	Administration— Information Management	St. Paul	Contact buyer
26-074-10522	Water Softener	Winona State University	Winona	Contact buyer
26-073-18434	Purchase of DASH System	St. Cloud State University	St. Cloud	Contact buyer
79-600-03501	Rental of Engineering Copier	Transportation	Rochester	Contact buyer
Sch. 93A Rebid	Liquid Petroleum Gas	Various	Various	Contact buyer
78-830-07970	Mixer & Bowls	MN Correctional Facility	St. Cloud	Contact buyer
Contract	Food Contract	Various	Various	Contact buyer
60-000-04570	Purchase & installation of Disk Drive	Higher Education Coordinating Board	St. Paul	Contact buyer
Contract	Library Books	Various	Various	Contact buyer
Contract—Rebid	Braille Supplies	Jobs & Training	St. Paul	\$8,000-8,500
60-000-04579-80-1- 2-3-4743-4-5-6-7	Minnesota—So. Dakota Higher Education; S. Dakota Vocational; N. Dakota Higher Education; N. Dakota Vocational; Wisconsin Reciprocity	Higher Education Coordinating Board	St. Paul	Contact buyer

## STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
60-000-04561-2-& 4-4458-9-60	Future Choices Booklet, Guide & Poster	Higher Education Coordinating Board	St. Paul	Contact buyer
07-500-36581	Ring Binders—Swing Hinge	Public Safety	St. Paul	Contact buyer
79-000-50205	Enhancement of Aeronautics Weather Program	Transportation	St. Paul	Contact buyer
Contract	Paper Wrapping, Aluminum Foil, Plastic Tableware & Related Items	Various	Various	\$20,000-25,000
Contract	Offset Supplies	Administration Printing & Mailing	St. Paul	\$10,000-15,000
27-154-46544-4793	1986-88 College Catalog	Lakewood Community College	White Bear Lake	Contact buyer
27-144-49021-4712	1987-88 Catalog	Itasca Community College	Grand Rapids	Contact buyer
29-001-09665	Diesel Crawler Tractor	Natural Resources	Grand Rapids	Contact buyer
11-015-07800	Telephone System	Health	St. Paul	Contact buyer
79-000-50631	Commercial Test Chamber	Transportation	Fort Snelling	Contact buyer
Sch. 113C	Trucks	Various	Various	Contact buyer
07-700-36980	Packages	MN Correctional Facility	St. Cloud	Contact buyer
79-800-00000	Cultured Sod	Transportation	Pick Up	Contact buyer
02-443-47163	Purchase of Microfilm Processor	Administration—Micrographics Services	St. Paul	Contact buyer
55-101-06426	Rental of Photocopy Machines	Fergus Falls State Hospital	Fergus Falls	Contact buyer

Contact 296-6152 for referral to specific buyers.

## Department of Employee Relations Employee Benefits Division

### Contract Available for Employee Benefit Plan Claims Audit

#### I. Background

The State of Minnesota, including the University of Minnesota, provides group health and dental coverage to approximately 48,000 employees. Blue Cross/Blue Shield provides coverage through a minimum premium plan to 28,000 of this total. Estimated costs are approximately \$48 million for 1986. The remaining employees are covered through nine HMO's.

Dental insurance is similarly provided through a minimum premium plan with Delta Dental covering 39,000 employees with total costs estimated to be \$11 million. The remaining employees receive dental coverage through two HMO's.

Enclosed is a brief description of these state benefit plans for use in preparing proposals.

#### II. Scope of Project

Phase 1—The State of Minnesota plans to have the current claims administration process performed by Blue Cross/Blue Shield of Minnesota audited to determine whether their procedures are appropriate, efficient and effectively contain medical costs while accurately paying all eligible and legitimate claims.

Phase 2—To audit the current claims administration process as performed by Delta Dental of Minnesota to similarly determine their effectiveness and accuracy in the processing of dental claims for the State of Minnesota. This second phase to be conducted in the second year of the biennium (July 1, 1986—June 30, 1987) and may or may not be actually performed pending possible budgetary limitations in the second year. This should be considered a stand-alone portion of this audit process with a separate proposal being developed. However, only one organization will be selected to perform both Phase 1 and Phase 2 of the audit.



**III. Objectives and Project Tasks**

The overall objective of the audit process is to review and determine the effectiveness of the claims payment process and procedures being used by the two providers of service. It is expected that this review will include a careful review of the claims administration process to determine effectiveness, efficiency and accuracy. It is expected that the audit will identify potential problem areas and recommend possible improvements or changes the State should consider. The following is a representative list of the type of review which is expected, but the State is open to all recommendations on how best to perform this audit process:

- A. Tests of coverage and in-force status of benefits;
- B. tests of covered/non-covered status of charges;
- C. tests of deductibles;
- D. tests of coordination of benefit detection and administration;
- E. clerical errors in preparation;
- F. tests of reliability of output reports;
- G. tests of benefit payments in accordance with appropriate plan provisions including benefit schedules;
- H. tests of all cost containment provisions and the internal procedures to administer these programs.

**IV. Department Contacts**

All inquiries regarding the RFP and requests for additional information or clarification should be directed to:

Cornell J. Anderson, Benefits Manager  
Department of Employee Relations  
3rd Floor, Space Center Building  
444 Lafayette Road  
St. Paul, MN 55101  
(612) 296-2642

**V. Submission of Proposals**

All proposals must be sent to and received by:

Cornell J. Anderson, Benefits Manager  
Department of Employee Relations  
3rd Floor, Space Center Building  
444 Lafayette Road  
St. Paul, MN 55101

The proposals must be received no later than January 13, 1986. Please submit four copies of the proposal. Prices and terms of the proposal as stated must be valid for the length of the project. This Request for Proposal (RFP) does not obligate the State to complete the project and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

**VI. Project Cost**

It is anticipated that costs for each separate phase of this project will not exceed \$10,000.

**VII. Project Completion Date**

Phase 1 of this project must be completed no later than June 30, 1986 and Phase 2 no later than June 30, 1987. Ideally, it would be requested that Phase 1 be completed during the period of March 1-May 31, 1986 and Phase 2, July 1-September 30, 1986 (if final approval given to proceed with Phase 2).

**VIII. Proposal Contents**

It is expected that the proposals will include a thorough description of the procedures and methods to be used in conducting the audit. Included should be methods of claims analysis, sampling techniques, employee/users input, etc.

The proposal should also state outcomes of the audit including the types of reports or information to be provided as part of the final product. Included should be an approximate timetable which would be followed in completion of the audit.

Individuals who would be assigned to the project and a synopsis of their technical expertise and background in working on similar type projects should be included. The inclusion of prior studies or similar reports as examples of the type of audits which have previously been conducted would be desirable.

Requirements for support from the Benefits Division of the State should be identified and listed as to amount and type of assistance and input which will be required.

## STATE CONTRACTS

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### IX. Evaluation

All proposals received by the deadline will be evaluated by representatives from the Department of Employee Relations and final candidates will be contacted for the opportunity to make formal presentations regarding their proposal. Factors upon which the proposals will be judged include, but are not limited to, the following:

- A. Proposed audit including the type and extent of services to be provided.
- B. Prior experience and demonstrated capabilities by the staff and organization to effectively conduct such an audit.
- C. Project cost.

## Pollution Control Agency Office of Planning and Review

### Request for Proposals for Consultant Services

The Minnesota Pollution Control Agency wishes to retain a consultant to assist in the preparation of an environmental impact statement (EIS) on the proposed Anoka County—Northern States Power Company refuse-derived fuel (RDF) facility in Elk River, Minnesota. A draft EIS is to be completed by April 2, 1986, with the final EIS to be done by June 16, 1986. The amount available for EIS consultant services for the project has not yet been defined but is not expected to exceed \$75,000. The facility is expected to be nearly identical to that proposed for the Northern States Power Company RDF facility at Newport, Minnesota, for which an EIS was prepared in 1985 by the Metropolitan Council of the Twin Cities Area. Time will be of the essence in the review of information provided by the proposers and in the preparation of the draft and final EIS documents.

Copies of the Request for Proposals and the scoping environmental assessment worksheet on the project are available from:

Eric J. Kilberg, Project Manager  
Office of Planning and Review  
Minnesota Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113  
(612)296-7795

Proposals must be received by 4:30 p.m. on January 13, 1986. Finalists will be chosen and notified on January 14, 1986, and interviews will be scheduled on January 16th and 17th. Selection of the consultant will take place on January 20th.

## Department of Public Safety

### Request for Proposals for Public Reporting of Drinking Driver Program

The Minnesota Department of Public Safety is engaged in various programs to provide coordination and support for efforts to control drinking drivers and to reduce death, injury and economic loss resulting from the illegal and dangerous act of driving while intoxicated (DWI).

While enforcing the law by arresting and punishing DWI violators is primarily the function of police and courts, prevention of the act itself depends on general public knowledge of both the risk of crash and injury to self or others, and the risk of arrest and punishment. The public perception of both risks must be enhanced in order to achieve the maximum deterrence.

One method of enhancing the perception of risk is to devise an effective system by which the help of the general public is enlisted to reported apparently drunken drivers.

Various systems have been used in other states and communities which inform the public about how to make such reports, what to note about driving behavior, car and driver description and other pertinent information. The Department must contract for planning, creating and conducting such a campaign because the staff does not have sufficient personnel time, skills, or equipment to produce and carry on such a service.

### Background

Preventing drunken driving rests both on (1.) voluntary compliance with the law because people view sober driving as protecting.

themselves and others from death or injury, and also on (2.) fear of arrest and punishment if they break the law, even if there is little sense of social obligation to obey it.

Even though rates of police apprehension of drinking drivers has increased in recent years, and even though research has shown substantial reduction in the amount of drunken driving on Minnesota roads, literally thousands of drivers continue to drive drunk. Substantial increases in the amount of police patrolling time devoted to DWI control is not likely in the absence of increases in police personnel.

Both strategies for preventing drunken driving can be enhanced by a soundly conceived and well publicized campaign to encourage public reporting.

Recommendations that states institute such public DWI reporting programs have come from, among others, the National Transportation Safety Board, the National Highway Traffic Safety Administration and the Presidential Commission on Drunk Driving. Federal highway safety funds will be used to plan, implement and evaluate such a program.

### **I. Scope, Goals and Objectives**

The scope of the campaign is to develop a legal, safe and effective means by which members of the general public can assist in the identification and prompt reporting to police of drivers who appear to be driving drunk so that such drivers may be apprehended. Further, the campaign will disseminate as widely as possible information on how to participate and encourage such participation.

The goal of the program is to deter drunken driving and thus contribute to a further reduction in alcohol-related traffic crashes and the resulting loss of life, injury and economic cost.

The objective is to increase general awareness of ways in which the public can take part in, and contribute to, the prevention of drunken driving and the apprehension of violators on Minnesota roads.

### **II. Project Tasks**

The Development of Public Safety Office of Traffic Safety wishes to contract with an organization, agency or association to develop and produce a public reporting system through which people in Minnesota will report dangerous driving by persons who appear to be driving while impaired by alcohol.

Desirable attributes or qualifications of the contractor to be selected include the following:

- \* A non-profit organization with experience in both traffic safety and public service outreach.
- \* Experience working with voluntary groups or citizen organizations, preferably on a statewide basis with local or rural capacity.
- \* Experience with programs involving law enforcement or public health, preferably in alcohol or other drug problem prevention and control.

Ideas for the development of the system and for publicizing it so as to encourage participation will be the responsibility of the contractor, but advice and consultation with the staff of the Office of Traffic Safety is expected. Information about similar programs in other places, research bearing on such programs and their evaluation, and other material useful to the contractor will be shared by the Office of Traffic Safety.

The Contractor shall be responsible for the following:

- A. Identification and development of a creative design for the public information and communication aspects of the program, including a plan for conducting these activities.
- B. Identifying, meeting with, and enlisting the cooperation and participation of individuals, groups, organizations and agencies who can help make the program effective or who share the goals and may thus be natural allies and participants.
- C. Develop, produce and distribute through appropriate information channels and media, materials in support of the program, describing how the public can participate, and encouraging that participation.
- D. Provide and assign personnel adequate to developing and conducting such a comprehensive DWI reporting program and evaluating its success.
- E. Subcontract with appropriate organizations or individuals for services in support of the campaign, in collection of evaluation data, or in otherwise enhancing achievement of the program goals.

### **III. Project Costs**

The Department has estimated that the cost of the campaign from February 1, 1986 through September 30, 1986 should not exceed \$75,000 for professional services and expenses.

# STATE CONTRACTS

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## IV. Department Contracts

Prospective responders who have any questions regarding this Request for Proposal may call or write:

Thomas A. Boerner  
(612) 296-3804  
Office of Traffic Safety  
Department of Public Safety  
207 Transportation Building  
St. Paul, MN 55155

Please Note: Other department personnel are not allowed to discuss the project with responders before the submittal of proposal deadline.

All proposals must be sent to and received by Thomas A. Boerner not later than 4:30 p.m. Wednesday, January 15, 1986.

Late proposals will not be accepted. Three copies of the proposal are required. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

## V. Project Completion Date

The project will be completed by September 30, 1986.

## VI. Proposal Contents

The following will be considered minimum contents of the proposal:

- A. A restatement of the objective to show or demonstrate the responder's view of the nature of the project.
- B. Outline of the responder's background and experience as an agency with emphasis on local, state and federal government work. Preference will be given to non-profit organizations with experience in working with appropriate community groups. Selection of personnel assigned to the project will be the prerogative of the contractor without the approval of the state project director or manager.
- C. A detailed cost and work plan which will identify the major tasks to be accomplished and be used as a scheduling and managing tool as well as the basis for invoicing.
- D. Identification of the expected level of the department's participation in the project as well as any other services to be provided by the department.

## VII. Evaluation

All proposals received by the deadline will be evaluated by representatives of the Department of Public Safety. In some instances, an interview will be part of the evaluation process. Factors upon which proposals will be judged include—but are not limited to—the following:

- A. Expressed understanding of project objectives.
- B. Project work plan.
- C. Project cost detail.
- D. Qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of the firm.

Evaluation and selection will be completed by January 30, 1986. Results will be sent immediately by mail to all responders.

## VIII. Renewal Option

The Department of Public Safety will retain an option to renew the contracts for a second year with the contractor's consent if the Office of Traffic Safety is satisfied with the contractor's performance. The value of contracts for any second year may be adjusted.

# STATE GRANTS

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In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

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## Department of Health

### Public Comment Solicited on Preventive Health and Health Services Block Grant Application for Federal Fiscal Year 1986

The Minnesota Department of Health has prepared an application for the Preventive Health and Health Services Block Grant for Federal Fiscal Year 1986. The following is a financial summary of the activities funded in the application:

<u>Service Area</u>	<u>Amount</u>
I. Disease Prevention and Health Promotion	\$463,100
A. Minnesota Center for Health Promotion and Education	
B. Chronic Disease Epidemiology	
C. Disease Prevention and Health Promotion Supervision	
D. Disease Prevention and Health Promotion Field Services	
E. Health Education	
II. Public Health Laboratories	443,200
A. Data and Specimen Handling	
B. Environmental Laboratories	
C. Microbiology	
D. Heredity and Metabolic Laboratory	
E. Immunology	
F. Clinical Laboratory Improvement	
<u>Service Area</u>	<u>Amount</u>
III. Environmental Health	\$349,800
A. Environmental Field Services	
B. Water Supply and Engineering	
C. Radiation Control	
IV. Community Services	279,500
A. Community Development	
B. Public Health Nursing	
V. Emergency Medical Services	279,500
VI. General Support	304,500
A. Minnesota Center for Health Statistics	
B. Rape Prevention	
C. Indirect Cost	

The department invites public review and comment. Copies of the application are available upon request. Requests should be sent to David Hovet, Accounting Director, Section of Financial Management, Minnesota Department of Health, P.O. Box 9441, Minneapolis, MN 55440.

# SUPREME COURT CALENDAR

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

## JANUARY, 1986

### MONDAY, JANUARY 6, 1986

**84-1253 KNUTSON CONSTRUCTION COMPANY (Attorney: Carlsen, Greiner & Law and John E. Rode) vs. ST. PAUL FIRE AND MARINE INSURANCE CO. (Attorney: Gislason, Dosland, et al, and Timothy P. Tobin).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

May a construction contractor, who has contractually agreed to provide all labor and materials for a project, pass on to its GCL carrier claims arising out of defective work and materials when the claimed damages are the cost of repair alone?

Does the recent Minnesota Supreme Court decision, Bor-Son Building Corp. v. Employer's Commercial Union Ins. Co. of America, compel a denial of coverage?

Are claims of loss arising out of defective labor and materials covered by the St. Paul Mercury Builder's risk policy? [All issues as in brief of Respondents]

**85-88 and 85-158 MURPHY, MARY E., INDIVIDUALLY & AS TRUSTEE FOR THE HEIRS OF GARY K. MURPHY (Attorney: Sandberg, David) vs. MILBANK MUTUAL INSURANCE CO. (Attorney: Hagglund, Holmgren & Oskie and David Oskie).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Does Minn. Stat. 65B.49, subd. 6(f), effective May 27, 1977, require an insurer to offer supplemental uninsured motorist coverage on a policy in effect prior to the statute's effective date when the policy is modified subsequent to the effective date of the statute? [Issue as in brief of Respondent, Milbank Mutual]

### TUESDAY, JANUARY 7, 1986

**85-811 LITTLE EARTH OF UNITED TRIBES, INC. (Attorney: Doherty, Rumble & Butler, and Jerome Halloran) vs. HENNEPIN, COUNTY OF AND STATE OF MINNESOTA (Attorney: Neher, James W., Special Assistant Attorney General).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order Tax Court.

Is the taxation of federally subsidized low-and-moderate-income housing pursuant to Minn. Stat. 272.02, subd. 1(6) and 273.13, subd. 17 constitutional under the supremacy clause of the United States Constitution?

Is the taxation of federally subsidized low-and-moderate-income housing pursuant to the above two statutes constitutional under the equal protection clause of the United States Constitution and the uniformity clause of the Minnesota Constitution?

Does federally subsidized low-and-moderate-income housing qualify for exemption from taxation as "public property exclusively used for any public purpose" within the meaning of Minn. Stat. 272.02, subd. 1(7) (1984)? [All issues as in brief of Relator, Little Earth of United Tribes]

**85-1264 QUAM, JEFFREY (Attorney: Yaeger, Robert H.) vs. STATE OF MINNESOTA, MINNESOTA ZOOLOGICAL GARDEN. (Attorney: Cannon, James F. State Attorney)** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order Workers' Compensation Court of Appeals.

Is an employee's attorney entitled to payment of attorney's fees where the employee has not met the prerequisites for entitlement to payment of permanent partial disability under Minn. Stat. 176.021, subs. 3 and 3(a)?

### WEDNESDAY, JANUARY 8, 1986

**84-2085 FINE, HARRY A. ET AL, (Attorney: Mirviss, Seltz, Seltz & Rooney and Israel Mirviss) vs. HENNEPIN, COUNTY OF (Attorney: Johnson, Thomas L., Hennepin County Attorney and Richard T. Todd).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Are property owners, whose land was taken by a condemnor pursuant to Minn. Stat. 117.042 prior to August 1, 1976, entitled to payment of interest earned on funds deposited by the condemnor with the clerk of District Court at the time of the taking as compensation for the taking, but not disbursed by the clerk to the property owners until a later date?

Are stipulations between condemnor and property owners, made in condemnation proceedings pursuant to Minn. Stat. Ch. 117, material to property owners' claims against clerk of court and condemnor for payment of interest on deposited funds?

Should an award of prejudgment interest based other than on the provisions of Minn. Stat. 549.09, subd. 1, be computed according to the applicable judgment rates rather than according to the lawful rate of 6%? [All issues as in brief of Harry A. Fine]

**84-2177 MOYLAN, BONNIE Y., IN RE: THE MARRIAGE OF (Attorney: Goff, Kaplan & Wolf and Richard D. Goff) vs. MOYLAN, GERALD G. (Attorney: Smith, Juster, et al, and J. Christopher Cuneo).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Should the *Hadrava* ruling, that the child-support guidelines apply to post-decree modification proceedings once the requisite change in circumstances is shown, be overruled?

Assuming *Hadrava* is not overruled, did the trial court abuse its discretion in ordering an increase in support in accordance with the guidelines under the facts of this particular case? [All issues as in brief of Respondent, Bonnie Y. Moylan]

#### **THURSDAY, JANUARY 9, 1986**

**84-2210 LOVGREN, ELLIS (Attorney: Abrams & Spector and Joseph T. Herbulock) vs. PEOPLES ELECTRIC COMPANY, INC. (Attorney: Rider, Bennett, et al, and Eric J. Magnuson).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Does the re-enactment of Minn. Stat. 541.051 (1980) without an effective date demonstrate a "clear and manifest" intent by the legislature for this statute to apply retroactively?

Was granting Respondent's motion for summary judgment by the trial court proper where Minn. Stat. 541.051 (1980) requires commencing an action, not within two years of the accident, but within two years from the discovery of the defect in the real property, which was the proximate cause of the injury? [All issues as in brief of Appellant, Lovgren]

**85-1517 HUBBARD BROADCASTING, INC. D.B.A. KSTP-TV, KSTP-AM, INC., ETC. (Attorney: Leonard, Street & Deinard and Sidney Barrows) vs. METROPOLITAN SPORTS FACILITIES COMMISSION (Attorney: Olson, Gunn & Seran and Wayne H. Olson).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Certified question, 8th Circuit Court of Appeals.

Is the Scoreboard System Agreement a contract for supplies, materials or equipment within the meaning of the public bidding statutes, Minn. Stat. 471.345 and 473.556(7), and, if so, is the agreement not subject to the public bidding requirement because it falls within the exception provided in Minn. Stat. 473.556(7)?

Did the Commission, pursuant to Minn. Stat. 473.556, have the authority to sell or lease advertising in the Metrodome on an exclusive basis and, if so, did the Commission unlawfully delegate authority to sell or lease advertising within the Metrodome by entering into the scoreboard system agreement with ASI/TCF without establishing any standards or policies? [All issues as in brief of Appellant, Commission]

#### **MONDAY, JANUARY 13, 1986**

**84-2000 POTTER, DONALD E. (Attorney: Masica, Mark Alexis) vs. LASALLE COURT SPORTS & HEALTH CLUB (Attorney: Meagher, Geer, et al, and Steven D. Jamar).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Has Potter failed to establish his prima facie case where he failed to prove actual injury and failed to establish that the allegedly discriminatory actions were taken because of his beliefs rather than because of his improper actions?

Has Sports and Health Club established the affirmative defense of administration of reasonable regulations compelled by social, legal, and business requirements?

Is Potter entitled to punitive damages where he was not awarded compensatory damages and where the actions taken by the relator were undertaken in the good faith, reasonable belief that the actions were lawful and proper? [All issues as in brief of Relator, LaSalle Court]

**84-2077 CARLSON, KAY, ET AL, (Attorney: Oppenheimer, et al, and Mark P. Wine) vs. INDEPENDENT SCHOOL DISTRICT NO. 623, ET AL (Attorney: Knutson, Flynn & Hetland and Susan J. Schoell).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Is notice required to toll a statute of limitations for six years after an attempted class action is commenced?

Is the six month limitation of Minn. Stat. 363.06(3) (1974-1980) jurisdictional and not subject to tolling?

#### **THURSDAY, JANUARY 14, 1986**

**84-1347 STATE OF MINNESOTA (Attorney: Halbach, Peter K., Special Assistant Attorney General) vs. DOUGHMAN, KURT DEAN (Attorney: Jones, C. Paul, Public Defender and Steven P. Russett, Assistant).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the trial court commit prejudicial error by admitting *Spreigl* evidence where respondent's participation in the prior conduct was not clearly and convincingly proven, where proper notice was not given by the State, and where the evidence was irrelevant and prejudicial?

# SUPREME COURT CALENDAR

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Was the evidence presented at trial insufficient as a matter of law to establish respondent's guilt beyond a reasonable doubt where the circumstantial evidence was wholly consistent with the rational hypothesis of innocence?

Was respondent's right to testify impermissibly chilled by the trial court's admission of respondent's prior convictions and threatened admission of evidence suppressed as the result of an illegal search?

Must respondent's conviction for attempted arson in the third degree be vacated where he was never charged with the crime and where the jury was never instructed as to the elements of the offense?

Did the trial court abuse its discretion in imposing upon respondent a 60 month executed term where no aggravating circumstances existed to justify any durational departure whatsoever from the presumptive term of 32½ months? [All issues as in brief of Respondent, Doughman]

**85-1129 SANDBERG, JOHN R. (Attorney: Robbins & Rashke and Ford M. Robbins) vs. COMMISSIONER OF REVENUE (Attorney: Eisenstadt, Amy, Special Assistant Attorney General).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order Tax Court.

Is a taxpayer's state of residence to be determined by his intent to make a state his permanent home as evidenced by his actions as well as his words?

Are the Findings of Fact made by the trial court supported by the evidence?

Was the documentary evidence properly admitted into evidence? [All issues as in brief of Respondent, Commissioner]

## WEDNESDAY, JANUARY 15, 1986

**84-1782 STATE OF MINNESOTA (Attorney: Early, James B., Special Assistant Attorney General) vs. LARSON, KEVIN SCOTT (Attorney: Mack, John E.).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Was it error for the Court of Appeals to reverse Respondent's conviction, without requesting either briefs or argument, on a ground not stated as an issue in his brief?

Did Respondent waive his right to appeal a sustained objection when he failed to make a proper offer of proof?

Did the trial court properly exercise its discretion in sustaining an objection when Respondent did not have any basis for asking the question? [All issues as in brief of Petitioner]

**85-1626 O'NEILL, ERNEST JR., ET AL, (Attorney: Peine, Douglas) vs. ILLINOIS FARMERS INSURANCE CO. (Attorney: Jardine, Logan & O'Brien and Lawrence M. Rocheford).** 9:00 a.m. State Capitol, St. Paul. ORIGIN: Certification & Request Court of Appeals.

Does a cause of action to imply underinsured motorist coverage accrue on the date the insured settles her claim against the negligent and underinsured party? [Issue as in brief of Illinois Farmers]

# SUPREME COURT DECISIONS

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## Decisions Filed Friday, December 13, 1985

Compiled by Wayne O. Tschimperle, Clerk

**C3-84-1605 County of Hennepin on Behalf of Tammie Lea Bartlow, Petitioner, Appellant v. Dennis Brinkman.** Court of Appeals.

District court may enter a contempt citation ordering a defendant in a parentage suit to submit to blood tests.

District court may enter a default judgment against a defendant in a parentage suit who refuses to appear for court-ordered blood tests, but the court must, upon request of the defendant, conduct a hearing verifying the allegations in the complaint.

Defendant is deemed to have waived his rights to such a procedure, and default judgment will stand unless he submits blood test results within 90 days disproving parentage.

Reversed in part and affirmed in part. Yetka, J.



**C0-84-489 Raymond A. Case, Jr. v. Warden Frank Wood, etc., Petitioner, Appellant. Court of Appeals.**

Dismissed. Per Curiam.

Took no part, Peterson, J.

**C4-84-964 State of Minnesota v. Steven Todd Anderson, f.k.a. Steven Todd Jenkins, Appellant. Lincoln County.**

The evidence, taken as a whole, identifies defendant, beyond a reasonable doubt, as the person who killed Rudolph Blythe and Deems Thulin.

The evidence is sufficient to prove premeditation in the killing of Rudolph Blythe.

The trial court properly ruled as to the admissibility of the expert psychiatric testimony, evidence of James Jenkins's character and past bad conduct, the graphological personality assessment and the polygraph test results.

The trial court did not err in denying the motion for a *Schwartz* hearing based on speculative and doubtful allegations of jury misconduct.

Lack of sequestration of the jury during its deliberations, on this record, did not deny defendant a fair trial by an impartial jury.

Affirmed. Wahl, J.

Took no part, Kelley, J.

**C4-85-800 Charles J. Green v. Boise Cascade Corporation, self-insured, Relator. Workers' Compensation Court of Appeals.**

An employee does not sustain disablement due to occupational disease until he or she cannot earn full wages at the work at which he or she was last employed. Disablement is not established by evidence that the employer was put on notice that the employee has or might have the disease.

Reversed. Wahl, J.

State of Minnesota  
State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155

(612) 297-3000  
(toll-free # for MN:  
1-800-652-9747)

## ORDER FORM

**State Register.** Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

- \_\_\_\_\_ Annual subscription \$130.00
- \_\_\_\_\_ Trial subscription (13 weeks) \$40.00
- \_\_\_\_\_ Single copies \$3.25 each

**Minnesota Guidebook to State Agency Services 1984-85.** A 623-page guide to services provided by Minnesota agencies.

- \_\_\_\_\_ Single copy: \$12.50 + \$.75 tax = \$13.25\* each

**Minnesota Rules 1985.** 10-volume set.

- \_\_\_\_\_ Set: \$125.00 + \$7.50 = \$132.50.\*
- \_\_\_\_\_ Each volume: \$13.00 + \$.78 = \$13.78.
- \_\_\_\_\_ No handling charge.

**Minnesota Laws 1985.** All laws passed in the Regular and Special Sessions.

- \_\_\_\_\_ \$37.00 + \$2.22 = \$39.22.\*
- \_\_\_\_\_ No handling charge.

\*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Department of Revenue. No Mastercard/VISA accepted on Rules and Laws.

Please enclose full amount for items ordered: prepaid orders only. Make check/money order payable to "State of Minnesota." (Phone orders are taken only with a Mastercard/VISA charge number.)

**EACH ORDER MUST INCLUDE \$1.50 POSTAGE AND HANDLING FEE.**

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