

House Research Act Summary

CHAPTER: 295 (S.F. 1653/H.F. 2087 & 2093) **SESSION:** 2012 Regular Session

TOPIC: Building codes and licensing/Independent contractors

Date: May 22, 2012

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Article 1: Department of Labor and Industry Housekeeping Bill

- 1 10 **Voluntary apprenticeship program.** Makes technical and conforming changes to update Minnesota law regarding the voluntary apprenticeship program consistent with federal law.
- 11 **Licensing not requiring examination administered by the commissioner.** Eliminates redundant language relating to the issuance of licenses.
- 12 **License fees and license renewal fees.** Updates and clarifies license fees to conform with new fee structure enacted in 2010 and 2011.
- 13 **Internet continuing education.** Adds to list of entities to approve internet courses.
- 14 **Agricultural building.** Clarifies the definition of agricultural building by tying it to local assessors and the governing property tax statutory language.
- 15 **Exemption from licensing.** Updates reference by changing from "plumber's apprentice" to "unlicensed individual."
- 16 **Application, examination and license fees.** Updates reference by changing from "plumber's apprentice" to "unlicensed individual."
- 17 **Repealer.** Rule repealer. Contains rules identified on the department's obsolete rule report. The rules proposed for repeal contain language that is now covered directly by statute.

Article 2: Independent Contractors

1 **Definitions.** Clarifies the definition of "person" under the independent contractor law to specify that the definition includes limited liability companies and limited liability partnerships. Specifies a definition of "business entity" to mean a person other than an individual or sole proprietor.

2 **Independent contractor.** Replaces current law language referencing the independent contractor exemption certificate and moves and restates requirements for independent contractor status with language that makes an individual an independent contractor if the individual is registered with the Department of Labor and Industry (DOLI) and:

- maintains a separate business with the individual's own office, equipment, materials, and other facilities;
- holds or has applied for a federal employer ID number or has filed business or self-employment income tax returns in the previous year;
- is operating under contract to perform the specific services for the person, for specific amounts of money and under which the individual controls the means of performing the services;
- is incurring the main expense related to the services the individual is performing under the contract;
- is responsible for the satisfactory completion of the services that the individual has contracted to perform and is liable for failure to complete the services;
- receives compensation on a commission, per-job or competitive bid basis only;
- may realize a profit or loss under the contract;
- has continuing and recurring business liabilities or obligations; and
- the success or failure of the individual's business depends on the relationship of business receipts to expenditures.

Further specifies that if an individual is an owner or co-owner of a business entity, the individual isn't an employee of the person for whom the service is being performed and is not an employee of the business in which the individual has an ownership interest unless:

- the business entity meets all the requirement listed above;
- invoices are submitted in the name of the business entity;
- the business entity is registered with the secretary of state if required; and
- the business entity is registered with DOLI.

3 **Registration pilot project.** Directs the commissioner to implement a pilot project effective July 1, 2012, to register persons performing public or private sector commercial or residential construction or improvement services. The pilot project is to evaluate whether the information obtained through registration is of assistance to the departments of labor and industry, employment and economic development and revenue who are charged with enforcing laws related to misclassification of employees. Requires the commissioner of DOLI to report to the legislature by January 1, 2014, on needed changes to the program and possible registration fees to finance misclassification laws. No fee

may be charged during the pilot phase of the project which sunsets June 30, 2014, unless extended by the legislature.

Registration under the pilot project does not apply to:

- persons licensed, certified, or registered under chapters 299M (fire protection industry) or 326B (construction codes);
- persons holding an independent contractor exemption certificate that is in effect on September 15, 2012;
- persons under sections 326B.197 (gas, heating, ventilation, cooling, air conditioning, fuel burning, or refrigeration work) or 326B.46 (plumbing);
- an employee employed by a person performing construction services if the person is in compliance with employment laws at the time the services were performed;
- architects or professional engineers in professional practice under section 326.02;
- school districts or technical colleges;
- persons providing construction services on a volunteer basis, including but not limited to Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf; or
- handypersons exempt from licensing under chapter 326B.805, subdivision 6, clause (5).

4 Registration application. Provides for electronic registration for the pilot project. Strikes current law language related to applications for independent contractor exemption certificates and replaces it with new application information including:

- name, business address, physical address, phone number, and email address;
- federal employee ID number if applicable;
- evidence of active status of business filings with secretary of state if applicable;
- whether the applicant has employees at the time of application;
- names of other persons with ownership interest in the business entity who are not otherwise identified and the percentage of interest ownership by each person. Shareholders with less than 10 percent ownership in a publicly traded corporation need not be provided;
- information documenting compliance with workers compensation and unemployment insurance laws;
- certification that the person signing the application has reviewed it, determined the information is true and accurate, and determined that the person signing is authorized to do so; and
- a signed authorization for DOLI to verify the information on the application.

The department must be notified of changes to the application within 15 days of the change. A registered person must remain registered while providing services.

5 Web site. Directs the commissioner to develop and maintain a web site for application submission and processing.

- 6 Prohibited activities.** Clarifies prohibited activities.
- 7 Enforcement; remedies; penalties.** Provides for a maximum penalty of \$2,000 for failing to register. The commissioner must forgive the penalty if registration is completed within 30 days of the penalty order.
- 8 Notice requirements.** Requires that information about penalty forgiveness be included in the penalty order.
- 9 Notice to commissioner; review by commissioner of revenue.** Updates language to reflect changes to list of prohibited activities.
- 10 Data classified.** Updates and clarifies language to reflect new registration program. Provides that registration information on DOLI web site is for verification purposes only.
- 11 Withholding.** Eliminates reference to contractor tax withholding and repeals contractor withholding through repealer in section 13.
- 12 Applicable law.** Adds section 181.723 (independent contractors) to definition of applicable law for the administration of chapter 326B.
- 13 Repealers.**
- 14 Effective date.**