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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2198

02/25/2014 Authored by Nelson and Garofalo

The bill was read for the first time and referred to the Committee on Labor, Workplace and Regulated Industries

03/17/2014 Adoption of Report: Re-referred to the Committee on Jobs and Economic Development Finance and Policy

1.1 A bill for an act
1.2 relating to labor and industry; making permanent an independent contractor
1.3 registration pilot project; amending Minnesota Statutes 2012, section 181.723,
1.4 subdivisions 4, 4a, 5, 7, 16; proposing coding for new law in Minnesota Statutes,
1.5 chapter 326B.

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

1.7 Section 1. Minnesota Statutes 2012, section 181.723, subdivision 4, is amended to read:

1.8 Subd. 4. Independent contractor. (a) An individual is an independent contractor
1.9 and not an employee of the person for whom the individual is performing services in the
1.10 course of the person's trade, business, profession, or occupation only if the individual is
1.11 registered with the Department of Labor and Industry, if required under subdivision 4a,
1.12 and the individual:

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

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

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

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

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

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

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

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

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

2.8 An individual who is not registered, if required by section 326B.701, is presumed to  
 2.9 be an employee of a person for whom the individual performs services in the course of  
 2.10 the person's trade, business, profession, or occupation. The person for whom the services  
 2.11 were performed may rebut this presumption by showing that the unregistered individual  
 2.12 met all nine factors at the time the services were performed.

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

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

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

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

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

2.22 If the business entity in which the individual has an ownership interest is not  
 2.23 registered, if required by section 326B.701, the individual is presumed to be an employee  
 2.24 of a person for whom the individual performs services and not an employee of the business  
 2.25 entity in which the individual has an ownership interest. The person for whom the services  
 2.26 were performed may rebut the presumption by showing that the business entity met the  
 2.27 requirements of clauses (1) to (3) at the time the services were performed.

2.28 Sec. 2. Minnesota Statutes 2012, section 181.723, subdivision 4a, is amended to read:

2.29 Subd. 4a. **Applicability; registration pilot project requirement.** (a) The  
 2.30 ~~commissioner shall implement a pilot project, effective July 1, 2012, for the registration~~  
 2.31 ~~of Persons who perform public or private sector commercial or residential building~~  
 2.32 ~~construction or improvement services as described in subdivision 2~~ must register with the  
 2.33 commissioner as provided in this section. The purpose of ~~the pilot project is to evaluate~~  
 2.34 ~~whether the information obtained through registration assists~~ registration is to assist  
 2.35 the Department of Labor and Industry, the Department of Employment and Economic

3.1 Development, and the Department of Revenue to enforce laws related to misclassification  
 3.2 of employees. ~~The commissioner shall issue a report to the legislature no later than~~  
 3.3 ~~January 1, 2014, on recommendations for amendments to the registration program,~~  
 3.4 ~~including reasonable registration fees to be used to aid in enforcing misclassification laws.~~  
 3.5 ~~The commissioner must not charge a fee for registration under the pilot project, but may~~  
 3.6 ~~take the enforcement action specified in subdivision 8a. The pilot project shall expire on~~  
 3.7 ~~June 30, 2014, unless extended by the legislature.~~

3.8 (b) Except as provided in paragraph (c), any person who performs construction  
 3.9 services in the state on or after September 15, 2012, must register with the commissioner  
 3.10 as provided in ~~subdivision 5~~ section 326B.701 before performing construction services for  
 3.11 another person. The requirements for registration under ~~this subdivision~~ section 326B.701  
 3.12 are not a substitute for, and do not relieve a person from complying with, any other law  
 3.13 requiring that the person be licensed, registered, or certified.

3.14 (c) The registration requirements in ~~this subdivision~~ section 326B.701 do not apply to:

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

3.17 (2) a person who holds a current independent contractor exemption certificate  
 3.18 issued under this section that is in effect on September 15, 2012, except that the person  
 3.19 must register under ~~this section~~ 326B.701 no later than the date the exemption certificate  
 3.20 expires, is revoked, or is canceled;

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

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

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

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

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

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

3.32 Sec. 3. Minnesota Statutes 2012, section 181.723, subdivision 5, is amended to read:

3.33 Subd. 5. **Registration application.** (a) Persons required to register under  
 3.34 ~~subdivision 4a~~ section 326B.701 must submit electronically, in the manner prescribed by  
 3.35 the commissioner, a complete application according to paragraphs (b) to (d).

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

- 4.4 (1) the individual's full legal name and title at the applicant's business;
- 4.5 (2) the individual's business address and telephone number;
- 4.6 (3) the percentage of the applicant's business owned by the individual; and
- 4.7 (4) the individual's Social Security number.

4.8 (c) A complete application must also include the following information:

- 4.9 (1) the applicant's legal name; assumed name filed with the secretary of state, if any;  
4.10 designated business address; physical address; telephone number; and e-mail address;
- 4.11 (2) the applicant's Minnesota tax identification number, if one is required or has  
4.12 been issued;
- 4.13 (3) the applicant's federal employer identification number, if one is required or  
4.14 has been issued;
- 4.15 (4) evidence of the active status of the applicant's business filings with the secretary  
4.16 of state, if one is required or has been issued;
- 4.17 (5) whether the applicant has any employees at the time the application is filed;
- 4.18 (6) the names of all other persons with an ownership interest in the business entity  
4.19 who are not identified in paragraph (b), and the percentage of the interest owned by each  
4.20 person, except that the names of shareholders with less than ten percent ownership in a  
4.21 publicly traded corporation need not be provided;
- 4.22 (7) information documenting compliance with workers' compensation and  
4.23 unemployment insurance laws;
- 4.24 (8) a certification that the person signing the application has: reviewed it; determined  
4.25 that the information provided is true and accurate; and determined that the person signing  
4.26 is authorized to sign and file the application as an agent of the applicant. The name of the  
4.27 person signing, entered on an electronic application, shall constitute a valid signature of  
4.28 the agent on behalf of the applicant; and
- 4.29 (9) a signed authorization for the Department of Labor and Industry to verify the  
4.30 information provided on or with the application.

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

5.1 (e) The registered person must remain registered while providing construction  
 5.2 services for another person. The provisions of sections 326B.091 ~~and~~, 326B.094 ~~to~~,  
 5.3 326B.095, and 326B.097 apply to this section 326B.701. A person with an expired  
 5.4 registration shall not provide construction services for another person if registration is  
 5.5 required under this section. Registration application and expiration time frames are as  
 5.6 follows:

5.7 (1) all registrations issued on or before June 30, 2015, expire on June 30, 2015;

5.8 (2) all registrations issued after June 30, 2015, expire on the following June 30  
 5.9 of each odd-numbered year; and

5.10 (3) a person may submit a registration or renewal application starting April 1 of the  
 5.11 year the registration expires. If a renewal application is submitted later than May 1 of  
 5.12 the expiration year, registration may expire before the department has issued or denied  
 5.13 the registration.

5.14 Sec. 4. Minnesota Statutes 2012, section 181.723, subdivision 7, is amended to read:

5.15 Subd. 7. **Prohibited activities related to independent contractor status.** (a) The  
 5.16 prohibited activities in this subdivision are in addition to those prohibited in sections  
 5.17 326B.081 to 326B.085.

5.18 (b) An individual shall not hold himself or herself out as an independent contractor  
 5.19 unless the individual meets the requirements of subdivision 4.

5.20 (c) A person who provides construction services in the course of the person's trade,  
 5.21 business, occupation, or profession shall not:

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

5.24 (2) knowingly misrepresent or misclassify an individual as an independent  
 5.25 contractor;

5.26 Subd. 7a. **Prohibited activities related to registration.** (a) The prohibited activities  
 5.27 in this subdivision are in addition to those prohibited in sections 326B.081 to 326B.085.

5.28 (b) A person who provides construction services in the course of the person's trade,  
 5.29 business, occupation, or profession shall not:

5.30 ~~(3)~~ (1) contract with or perform construction services for another person without first  
 5.31 being registered if required by ~~subdivision 4a~~ section 326B.701;

5.32 ~~(4)~~ (2) contract with or pay another person to perform construction services if  
 5.33 the other person is not registered if required by subdivision 4a. All payments to an  
 5.34 unregistered person for construction services on a single project site shall be considered a  
 5.35 single violation. It is not a violation of this clause:

6.1 (i) for a person to contract with or pay an unregistered person if the unregistered  
6.2 person was registered at the time the contract for construction services was entered into; or

6.3 (ii) for a homeowner or business to contract with or pay an unregistered person if  
6.4 the homeowner or business is not in the trade, business, profession, or occupation of  
6.5 performing building construction or improvement services; or

6.6 ~~(5)~~ (3) be penalized for violations of this subdivision that are committed by another  
6.7 person. This clause applies only to violations of this paragraph.

6.8 Sec. 5. Minnesota Statutes 2012, section 181.723, subdivision 16, is amended to read:

6.9 Subd. 16. **Data classified.** Data in applications and any required documentation  
6.10 submitted to the commissioner under this section are private data on individuals or  
6.11 nonpublic data as defined in section 13.02. Data in registration certificates issued by  
6.12 the commissioner are public data; except that registration information published on the  
6.13 department's Web site may be accessed for registration verification purposes only. Data that  
6.14 document a revocation or cancellation of a certificate are public data. ~~Upon request of the~~  
6.15 ~~Department~~ The commissioners of revenue or the Department of, labor and industry, and  
6.16 employment and economic development, the commissioner may release to the requesting  
6.17 department each of the other departments data classified as private or nonpublic under this  
6.18 subdivision or investigative data that are not public under section 13.39 that relate to:

6.19 (1) investigations or determinations about misclassification of workers; or

6.20 (2) the issuance or denial of applications or revocations of certificates registration  
6.21 under section 326B.701.

6.22 Sec. 6. **[326B.701] CONSTRUCTION CONTRACTOR REGISTRATION.**

6.23 The following definition applies to this section: "business entity" means a person  
6.24 other than an individual or a sole proprietor.

6.25 Sec. 7. **REVISOR'S INSTRUCTION.**

6.26 The revisor of statutes shall renumber the citations in column A with the citations  
6.27 in column B. The revisor shall correct any cross-references required because of the  
6.28 renumbering and may make necessary grammatical and technical changes, including  
6.29 changes to sentence structure, to preserve the meaning of the text.

	<u>Column A</u>	<u>Column B</u>
6.30		
6.31	<u>326B.701, subd. 1</u>	<u>326B.701, subd. 1, paragraphs (a)</u>
6.32		<u>and (b)</u>
6.33	<u>181.723, subd. 1, paragraph (g)</u>	<u>326B.701, subd. 1, paragraph (c)</u>
6.34	<u>181.723, subd. 4a</u>	<u>326B.701, subd. 2</u>

7.1	<u>181.723, subd. 5</u>	<u>326B.701, subd. 3</u>
7.2	<u>181.723, subd. 5a</u>	<u>326B.701, subd. 4</u>
7.3	<u>181.723, subd. 7a</u>	<u>326B.701, subd. 5</u>
7.4	<u>181.723, subd. 8a</u>	<u>326B.701, subd. 6</u>
7.5	<u>181.723, subd. 10a</u>	<u>326B.701, subd. 7</u>
7.6	<u>181.723, subd. 16</u>	<u>326B.701, subd. 8</u>