

1 A bill for an act

2 relating to railroads; prohibiting railroad company
3 from obstructing treatment of railroad worker injured
4 on the job or from disciplining or threatening to
5 discipline injured railroad employee for requesting
6 treatment or first aid; proposing coding for new law
7 in Minnesota Statutes, chapter 219.

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

9 Section 1. [219.552] [OBSTRUCTING TREATMENT OF INJURED
10 WORKER.]

11 It is unlawful for a railroad company or person employed by
12 a railroad company negligently or intentionally to:

13 (1) deny, unreasonably delay, or interfere with medical
14 treatment or first aid treatment to an employee of a railroad
15 who has been injured during employment; or

16 (2) discipline or threaten to discipline an employee who
17 has been injured during employment for requesting medical
18 treatment or first aid treatment.

19 Sec. 2. [219.553] [ENFORCEMENT.]

20 Subdivision 1. [PENALTY.] The commissioner of
21 transportation may issue an order assessing a penalty to the
22 violating railroad company of up to \$10,000 for a violation of
23 section 219.552. In determining the amount of the penalty, the
24 commissioner shall consider those factors that must be
25 considered in determining a monetary penalty under section
26 221.036, subdivision 3. The contents of the order must include

1 the provisions specified in section 221.036, subdivision 4.

2 Subd. 2. [ADMINISTRATIVE HEARING OR JUDICIAL REVIEW.] A
3 railroad company against which a penalty is imposed under
4 subdivision 1 may request an expedited administrative hearing or
5 judicial review in district court. An expedited administrative
6 hearing under this subdivision must follow the procedure
7 provided in section 221.036, subdivision 7. Judicial review
8 under this subdivision is as provided in section 221.036,
9 subdivision 8.

10 Subd. 3. [ENFORCEMENT OF PENALTY.] A penalty ordered under
11 subdivision 1 and due and payable under this section may be
12 enforced by the attorney general in the manner provided under
13 section 221.036, subdivision 11.

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Senate

State of Minnesota

S.F. No. 778 - DWI Provisions (Judiciary Issues)

Author: Senator Leo T. Foley

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 21, 2005

Section 2 amends Minnesota Statutes, section 169A.60, subdivision 10, to change the scope of a court's hearing on appeal of a plate impoundment order. By deleting language in paragraph (c), the court would no longer consider questions of ownership of a vehicle or the driver's license status of a violator.

HW:cs



1 A bill for an act

2 relating to crimes; permitting Bureau of Criminal
3 Apprehension to certify chemical test results directly
4 to commissioner of public safety for driver's license
5 action; further limiting scope of judicial review of
6 license plate impoundment order; expanding proof of
7 service requirement for petitioner appealing license
8 plate impoundment or vehicle forfeiture order;
9 clarifying conditions under which new license plates
10 may be issued following plate impoundment;
11 strengthening the process for assessing chemical
12 dependency of impaired driving violators; amending
13 Minnesota Statutes 2004, sections 169A.52, subdivision
14 4; 169A.60, subdivisions 10, 11; 169A.63, subdivision
15 8; 169A.70, subdivision 3, by adding subdivisions.

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

17 Section 1. Minnesota Statutes 2004, section 169A.52,
18 subdivision 4, is amended to read:

19 Subd. 4. [TEST FAILURE; LICENSE REVOCATION.] (a) Upon
20 certification by the peace officer that there existed probable
21 cause to believe the person had been driving, operating, or in
22 physical control of a motor vehicle in violation of section
23 169A.20 (driving while impaired) and that the person submitted
24 to a test and the test results indicate an alcohol concentration
25 of 0.08 or more or the presence of a controlled substance listed
26 in schedule I or II, other than marijuana or
27 tetrahydrocannabinols, then the commissioner shall revoke the
28 person's license or permit to drive, or nonresident operating
29 privilege:

30 (1) for a period of 90 days;

1 (2) if the person is under the age of 21 years, for a
2 period of six months;

3 (3) for a person with a qualified prior impaired driving
4 incident within the past ten years, for a period of 180 days; or

5 (4) if the test results indicate an alcohol concentration
6 of 0.20 or more, for twice the applicable period in clauses (1)
7 to (3).

8 (b) On certification by the peace officer that there
9 existed probable cause to believe the person had been driving,
10 operating, or in physical control of a commercial motor vehicle
11 with any presence of alcohol and that the person submitted to a
12 test and the test results indicated an alcohol concentration of
13 0.04 or more, the commissioner shall disqualify the person from
14 operating a commercial motor vehicle under section 171.165
15 (commercial driver's license disqualification).

16 (c) If the test is of a person's blood or urine by a
17 laboratory operated by the Bureau of Criminal Apprehension, or
18 authorized by the bureau to conduct the analysis of a blood or
19 urine sample, the laboratory may directly certify to the
20 commissioner the test results, and the peace officer shall
21 certify to the commissioner that there existed probable cause to
22 believe the person had been driving, operating, or in physical
23 control of a motor vehicle in violation of section 169A.20 and
24 that the person submitted to a test. Upon receipt of both
25 certifications, the commissioner shall undertake the license
26 actions described in paragraphs (a) and (b).

27 [EFFECTIVE DATE.] This section is effective August 1, 2006,
28 and applies to blood and urine test samples analyzed on or after
29 that date.

30 Sec. 2. Minnesota Statutes 2004, section 169A.60,
31 subdivision 10, is amended to read:

32 Subd. 10. [PETITION FOR JUDICIAL REVIEW.] (a) Within 30
33 days following receipt of a notice and order of impoundment
34 under this section, a person may petition the court for review.
35 The petition must include proof of service of a copy of the
36 petition on the commissioner. The petition must include the

1 petitioner's date of birth, driver's license number, and date of
2 the plate impoundment violation, as well as the name of the
3 violator and the law enforcement agency that issued the plate
4 impoundment order. The petition must state with specificity the
5 grounds upon which the petitioner seeks rescission of the order
6 for impoundment. The petition may be combined with any petition
7 filed under section 169A.53 (administrative and judicial review
8 of license revocation).

9 (b) Except as otherwise provided in this section, the
10 judicial review and hearing are governed by section 169A.53 and
11 must take place at the same time as any judicial review of the
12 person's license revocation under section 169A.53. The filing
13 of the petition does not stay the impoundment order. The
14 reviewing court may order a stay of the balance of the
15 impoundment period if the hearing has not been conducted within
16 60 days after filing of the petition upon terms the court deems
17 proper. The court shall order either that the impoundment be
18 rescinded or sustained, and forward the order to the
19 commissioner. The court shall file its order within 14 days
20 following the hearing.

21 (c) In addition to the issues described in section 169A.53,
22 subdivision 3 (judicial review of license revocation), the scope
23 of a hearing under this subdivision is limited to:

24 ~~(1) whether the violator owns, is the registered owner of,~~
25 ~~possesses, or has access to the vehicle used in the plate~~
26 ~~impoundment violation,~~

27 ~~(2) whether a member of the violator's household has a~~
28 ~~valid driver's license, the violator or registered owner has a~~
29 ~~limited license issued under section 171.30, the registered~~
30 ~~owner is not the violator, and the registered owner has a valid~~
31 ~~or limited driver's license, or a member of the registered~~
32 ~~owner's household has a valid driver's license, and~~

33 ~~(3) if the impoundment is based on a plate impoundment~~
34 ~~violation described in subdivision 1, paragraph (c) (d), clause~~
35 ~~(3) or (4), whether the peace officer had probable cause to~~
36 ~~believe the violator committed the plate impoundment violation~~

1 and whether the evidence demonstrates that the plate impoundment
2 violation occurred; and

3 (2) for all other cases, whether the peace officer had
4 probable cause to believe the violator committed the plate
5 impoundment violation.

6 (d) In a hearing under this subdivision, the following
7 records are admissible in evidence:

8 (1) certified copies of the violator's driving record; and

9 (2) certified copies of vehicle registration records
10 bearing the violator's name.

11 [EFFECTIVE DATE.] This section is effective August 1, 2005.

12 Sec. 3. Minnesota Statutes 2004, section 169A.60,
13 subdivision 11, is amended to read:

14 Subd. 11. [RESCISSION OF REVOCATION, AND DISMISSAL OR
15 ACQUITTAL; NEW PLATES.] If:

16 (1) the driver's license revocation that is the basis for
17 an impoundment order is rescinded; and

18 (2) the charges for the plate impoundment violation have
19 been dismissed with prejudice; or

20 ~~(3)~~ the violator has been acquitted of the plate
21 impoundment violation;

22 then the registrar of motor vehicles shall issue new
23 registration plates for the vehicle at no cost, when the
24 registrar receives an application that includes a copy of the
25 order rescinding the driver's license revocation, and either the
26 order dismissing the charges, or the judgment of acquittal.

27 [EFFECTIVE DATE.] This section is effective the day
28 following final enactment.

29 Sec. 4. Minnesota Statutes 2004, section 169A.63,
30 subdivision 8, is amended to read:

31 Subd. 8. [ADMINISTRATIVE FORFEITURE PROCEDURE.] (a) A
32 motor vehicle used to commit a designated offense or used in
33 conduct resulting in a designated license revocation is subject
34 to administrative forfeiture under this subdivision.

35 (b) When a motor vehicle is seized under subdivision 2, or
36 within a reasonable time after seizure, the appropriate agency

1 shall serve the driver or operator of the vehicle with a notice
2 of the seizure and intent to forfeit the vehicle. Additionally,
3 when a motor vehicle is seized under subdivision 2, or within a
4 reasonable time after that, all persons known to have an
5 ownership, possessory, or security interest in the vehicle must
6 be notified of the seizure and the intent to forfeit the
7 vehicle. For those vehicles required to be registered under
8 chapter 168, the notification to a person known to have a
9 security interest in the vehicle is required only if the vehicle
10 is registered under chapter 168 and the interest is listed on
11 the vehicle's title. Notice mailed by certified mail to the
12 address shown in Department of Public Safety records is
13 sufficient notice to the registered owner of the vehicle. For
14 motor vehicles not required to be registered under chapter 168,
15 notice mailed by certified mail to the address shown in the
16 applicable filing or registration for the vehicle is sufficient
17 notice to a person known to have an ownership, possessory, or
18 security interest in the vehicle. Otherwise, notice may be
19 given in the manner provided by law for service of a summons in
20 a civil action.

21 (c) The notice must be in writing and contain:

22 (1) a description of the vehicle seized;

23 (2) the date of seizure; and

24 (3) notice of the right to obtain judicial review of the
25 forfeiture and of the procedure for obtaining that judicial
26 review, printed in English, Hmong, and Spanish. Substantially
27 the following language must appear conspicuously: "IF YOU DO
28 NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA
29 STATUTES, SECTION 169A.63, SUBDIVISION 8, YOU LOSE THE RIGHT TO
30 A JUDICIAL DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY
31 RIGHT YOU MAY HAVE TO THE ABOVE-DESCRIBED PROPERTY. YOU MAY NOT
32 HAVE TO PAY THE FILING FEE FOR THE DEMAND IF DETERMINED YOU ARE
33 UNABLE TO AFFORD THE FEE. IF THE PROPERTY IS WORTH \$7,500 OR
34 LESS, YOU MAY FILE YOUR CLAIM IN CONCILIATION COURT. YOU DO NOT
35 HAVE TO PAY THE CONCILIATION COURT FILING FEE IF THE PROPERTY IS
36 WORTH LESS THAN \$500."

1 (d) Within 30 days following service of a notice of seizure
2 and forfeiture under this subdivision, a claimant may file a
3 demand for a judicial determination of the forfeiture. The
4 demand must be in the form of a civil complaint and must be
5 filed with the court administrator in the county in which the
6 seizure occurred, together with proof of service of a copy of
7 the complaint on the prosecuting authority having jurisdiction
8 over the forfeiture, and the appropriate agency that initiated
9 the forfeiture, including the standard filing fee for civil
10 actions unless the petitioner has the right to sue in forma
11 pauperis under section 563.01. If the value of the seized
12 property is \$7,500 or less, the claimant may file an action in
13 conciliation court for recovery of the seized vehicle. A copy
14 of the conciliation court statement of claim must be served
15 personally or by mail on the prosecuting authority having
16 jurisdiction over the forfeiture, as well as on the appropriate
17 agency that initiated the forfeiture, within 30 days following
18 service of the notice of seizure and forfeiture under this
19 subdivision. If the value of the seized property is less than
20 \$500, the claimant does not have to pay the conciliation court
21 filing fee.

22 No responsive pleading is required of the prosecuting
23 authority and no court fees may be charged for the prosecuting
24 authority's appearance in the matter. The prosecuting authority
25 may appear for the appropriate agency. Pleadings, filings, and
26 methods of service are governed by the Rules of Civil Procedure.

27 (e) The complaint must be captioned in the name of the
28 claimant as plaintiff and the seized vehicle as defendant, and
29 must state with specificity the grounds on which the claimant
30 alleges the vehicle was improperly seized, the claimant's
31 interest in the vehicle seized, and any affirmative defenses the
32 claimant may have. Notwithstanding any law to the contrary, an
33 action for the return of a vehicle seized under this section may
34 not be maintained by or on behalf of any person who has been
35 served with a notice of seizure and forfeiture unless the person
36 has complied with this subdivision.

1 (f) If the claimant makes a timely demand for a judicial
2 determination under this subdivision, the forfeiture proceedings
3 must be conducted as provided under subdivision 9.

4 [EFFECTIVE DATE.] This section is effective August 1, 2005,
5 and applies to forfeiture actions initiated on or after that
6 date.

7 Sec. 5. Minnesota Statutes 2004, section 169A.70,
8 subdivision 3, is amended to read:

9 Subd. 3. [ASSESSMENT REPORT.] (a) The assessment report
10 must be on a form prescribed by the commissioner and shall
11 contain an evaluation of the convicted defendant concerning the
12 defendant's prior traffic and criminal record, characteristics
13 and history of alcohol and chemical use problems, and
14 amenability to rehabilitation through the alcohol safety
15 program. The report is classified as private data on
16 individuals as defined in section 13.02, subdivision 12.

17 (b) The assessment report must include:

18 (1) a diagnosis of the nature of the offender's chemical
19 and alcohol involvement;

20 (2) an assessment of the severity level of the involvement;

21 (3) a recommended level of care for the offender in
22 accordance with the criteria contained in rules adopted by the
23 commissioner of human services under section 254A.03,
24 subdivision 3 (chemical dependency treatment rules);

25 (4) an assessment of the offender's placement needs;

26 ~~(2)~~ (5) recommendations for other appropriate remedial
27 action or care, including aftercare services in section 254B.01,
28 subdivision 3, that may consist of educational programs,
29 one-on-one counseling, a program or type of treatment that
30 addresses mental health concerns, or a combination of them; or
31 and

32 ~~(3)~~ (6) a specific explanation why no level of care or
33 action was recommended, if applicable.

34 [EFFECTIVE DATE.] This section is effective August 1, 2005,
35 and applies to chemical use assessments made on or after that
36 date.

1 Sec. 6. Minnesota Statutes 2004, section 169A.70, is
2 amended by adding a subdivision to read:

3 Subd. 6. [METHOD OF ASSESSMENT.] (a) As used in this
4 subdivision, "collateral contact" means an oral or written
5 communication initiated by an assessor for the purpose of
6 gathering information from an individual or agency, other than
7 the offender, to verify or supplement information provided by
8 the offender during an assessment under this section. The term
9 includes contacts with family members, criminal justice
10 agencies, educational institutions, and employers.

11 (b) An assessment conducted under this section must include
12 at least one personal interview with the offender designed to
13 make a determination about the extent of the offender's past and
14 present chemical and alcohol use or abuse. It must also include
15 collateral contacts and a review of relevant records or reports
16 regarding the offender including, but not limited to, police
17 reports, arrest reports, driving records, chemical testing
18 records, and test refusal records. If the offender has a
19 probation officer, the officer must be the subject of a
20 collateral contact under this subdivision. If an assessor is
21 unable to make collateral contacts, the assessor shall specify
22 why collateral contacts were not made.

23 [EFFECTIVE DATE.] This section is effective August 1, 2005,
24 and applies to chemical use assessments made on or after that
25 date.

26 Sec. 7. Minnesota Statutes 2004, section 169A.70, is
27 amended by adding a subdivision to read:

28 Subd. 7. [PRECONVICTION ASSESSMENT.] (a) The court may not
29 accept a chemical use assessment conducted before conviction as
30 a substitute for the assessment required by this section unless
31 the court ensures that the preconviction assessment meets the
32 standards described in this section.

33 (b) If the commissioner of public safety is making a
34 decision regarding reinstating a person's driver's license based
35 on a chemical use assessment, the commissioner shall ensure that
36 the assessment meets the standards described in this section.

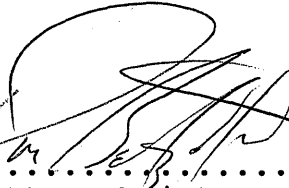
1 [EFFECTIVE DATE.] This section is effective August 1, 2005,
2 and applies to chemical use assessments made on or after that
3 date.

1 Senator Betzold from the Committee on Judiciary, to which
2 was re-referred

3 S.F. No. 778: A bill for an act relating to crimes;
4 permitting Bureau of Criminal Apprehension to certify chemical
5 test results directly to commissioner of public safety for
6 driver's license action; further limiting scope of judicial
7 review of license plate impoundment order; expanding proof of
8 service requirement for petitioner appealing license plate
9 impoundment or vehicle forfeiture order; clarifying conditions
10 under which new license plates may be issued following plate
11 impoundment; strengthening the process for assessing chemical
12 dependency of impaired driving violators; amending Minnesota
13 Statutes 2004, sections 169A.52, subdivision 4; 169A.60,
14 subdivisions 10, 11; 169A.63, subdivision 8; 169A.70,
15 subdivision 3, by adding subdivisions.

16 Reports the same back with the recommendation that the bill
17 do pass. Report adopted.

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.....
(Committee Chair)

March 22, 2005.....
(Date of Committee recommendation)

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S.F. No. 1287 - Construction Defects; Causes of Actions

Author: Senator Linda Scheid

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 4, 2005

S.F. No. 1287 provides procedures to govern disputes about construction defects in residential housing.

Section 1 has definitions that apply to the act, among them:

Subdivision 2 limits the application of the law to actions for more than \$7,500;

Subdivision 3 defines "association" as in the Common Interest Ownership Act;

Subdivision 6 defines "construction defect;" and

Subdivision 8 defines "dwelling" to include both single and multifamily residences.

Section 2 regulates the time for notice of a claim to be made, inspection, settlement offers, and failure to negotiate settlement.

Section 3 requires that contracts for sale or repair of housing include a notice to the buyer that problems with claimed defects are regulated by law.

Section 4, paragraph (a), requires that a lawsuit be dismissed if the claimant has not complied with the act.

Paragraph (b) excludes personal injury and death claims from the scope of the act.

Paragraph (c) allows early filing to toll the statute of limitations.

Paragraph (d) states that no new cause of action or limit on contributions from other parties is being created.

Paragraph (e) preserves insurance relationships.

Section 5 limits contractor liability if notices are ignored, building rules are followed, preexisting defects are present, or claimants refuse warranty service work.

Section 6 relates to claims involving associations.

Subdivision 1 prohibits bribes.

Subdivision 2 sets conditions for claims by associations.

Subdivision 3 requires association votes before association actions.

Subdivision 4 sets conditions for testing.

Subdivision 5 allows an exception for emergency repairs.

Section 7 gives the act an immediate effective date.

HW:cs

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A bill for an act

relating to real property; regulating causes of action arising out of construction defects in residential housing; providing for notice and opportunity to repair; proposing coding for new law as Minnesota Statutes, chapter 337A.

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

Section 1. [337A.01] [DEFINITIONS.]

Subdivision 1. [SCOPE.] For the purposes of this chapter, the following terms have the meanings given.

Subd. 2. [ACTION.] An "action" or "cause of action" means any civil lawsuit, judicial action, or arbitration asserting a claim in excess of \$7,500, including an action under section 327A.05, in whole or in part, for damages or other relief in connection with a dwelling, or any failure to construct a dwelling in accordance with any applicable code, law, statute, ordinance, or regulation, caused by an alleged construction defect.

Subd. 3. [ASSOCIATION.] An "association" has the meaning given in section 515.02, subdivision 5; 515A.1-103, clause (3); or 515B.1-103, clause (4).

Subd. 4. [BUSINESS DAY.] A "business day" means Monday through Friday, excluding any holidays as defined in section 645.44.

Subd. 5. [CLAIMANT.] A "claimant" means any person who asserts a claim relating to a construction defect.

1 Subd. 6. [CONSTRUCTION DEFECT.] A "construction defect" or
2 "defect" has the meaning assigned by an express, written
3 warranty provided by a contractor, or if no express warranty
4 provides a definition, means a matter concerning the design,
5 construction, or repair of a dwelling, of an alteration of or
6 repair or addition to an existing dwelling, or of an
7 appurtenance to a dwelling, on which a person has a complaint
8 against a contractor. A defect includes any physical damage to
9 the dwelling or any appurtenance, or the real property on which
10 the dwelling or appurtenance is affixed, caused by a
11 construction defect. A "major construction defect" has the
12 meaning given in section 327A.01, subdivision 5.

13 Subd. 7. [CONTRACTOR.] A "contractor" means a vendor, as
14 defined by section 327A.01, subdivision 7, and a home
15 improvement contractor, as defined by section 327A.01,
16 subdivision 10.

17 Subd. 8. [DWELLING.] A "dwelling" means a single-family
18 house, duplex, or multifamily unit designed for residential use
19 in which title to each individual unit is transferred to the
20 owner and shall include common areas and improvements that are
21 owned or maintained by an association or members of the
22 association. A dwelling includes the systems, other components,
23 improvements, other structures, or recreational facilities that
24 are appurtenant to the single-family house, duplex, or
25 multifamily unit at the time of its initial sale, but not
26 necessarily a part of the single-family house, duplex, or
27 multifamily unit.

28 Sec. 2. [337A.02] [NOTICE AND OPPORTUNITY TO REPAIR.]

29 Subdivision 1. [NOTICE.] Not later than 90 business days
30 before filing a cause of action, the claimant must provide
31 written notice to the contractor. The written notice must be
32 served by certified mail or personal service and must describe
33 in sufficient detail the defect that the claimant is claiming
34 has occurred.

35 Subd. 2. [RESPONSE.] Within 30 business days of receipt of
36 the notice in subdivision 1, the contractor must provide a

1 written response to the claimant. The response must be served
2 by certified mail or personal service and must:

3 (1) offer to settle the claim by a monetary payment, the
4 making of repairs, or a combination of both; or

5 (2) propose to inspect the dwelling that is the subject of
6 the claim.

7 Subd. 3. [INSPECTION; RESPONSE; SUPPLEMENTAL OFFER.] (a)
8 If a proposal for inspection is made under subdivision 2, the
9 claimant, within 30 business days of receiving the response,
10 must provide the contractor with timely access to the dwelling
11 in order to inspect and document the claimed defect, and perform
12 any testing reasonably necessary to evaluate the nature, extent,
13 and cause of the claimed defect, and nature and extent of any
14 repairs or replacements that may be required to remedy the
15 claimed defect.

16 (b) Within 14 business days of completing the inspection
17 and testing, the contractor must provide a written response to
18 the claimant. The response must be served by certified mail or
19 personal service and must:

20 (1) offer to settle the claim by a monetary payment, making
21 repairs, or a combination of both; or

22 (2) state that the contractor will not proceed further to
23 remedy the claimed defect.

24 (c) Within 15 business days of receiving a claimant's
25 rejection of a settlement offer made under paragraph (b), the
26 contractor may make a supplemental offer to settle the claim by
27 a monetary payment, making repairs, or a combination of both.

28 Subd. 4. [OFFER TO MAKE REPAIRS.] Any offer under
29 subdivision 2 or 3 to remedy the claimed defect by making
30 repairs shall include a detailed description of additional
31 construction necessary to remedy the defect and an anticipated
32 timetable for the completion of the construction.

33 Subd. 5. [ACCEPTANCE OF SETTLEMENT OFFER.] (a) If the
34 claimant accepts a settlement offer made in subdivision 2 or 3,
35 including a supplemental offer, the claimant must provide
36 written notice of the acceptance. The acceptance must be served

1 by certified mail or personal service within 30 business days of
2 receipt of the offer. The claimant may not file an action
3 without responding to the settlement offer within 30 business
4 days of receipt of the offer.

5 (b) If the claimant accepts an offer to repair, the
6 claimant must provide the contractor with timely access to the
7 dwelling to complete the construction by the timetable agreed
8 upon in the settlement offer.

9 (c) If a claimant accepts, and a contractor performs in
10 accordance with, a settlement offer made under this section, the
11 claim is satisfied.

12 (1) If a subsequent defect is alleged, the claimant must
13 provide notice to the contractor as provided by subdivision 1;
14 and

15 (2) the contractor is deemed to have been legally obligated
16 to make the repairs or monetary payment as if the claimant had
17 recovered a judgment against the contractor in the amount of the
18 cost of repairs or monetary payment, or a combination of both.

19 Subd. 6. [REJECTION OF CLAIM; FAILURE TO RESPOND; FAILURE
20 TO PROVIDE NOTICE.] The claimant may, without further notice or
21 delay, file a cause of action if the contractor:

22 (1) rejects the claim and will neither remedy the defect or
23 settle the claim as provided in subdivision 2 or 3;

24 (2) fails to serve a response to the claimant as required
25 by subdivision 2 or 3; or

26 (3) fails to provide the notice required by section 337A.03.

27 Subd. 7. [REJECTION OF SETTLEMENT OFFER.] (a) If the
28 claimant rejects a settlement offer made in subdivision 2 or 3,
29 including a supplemental offer, the claimant must provide
30 written notice of the rejection prior to commencing an action.
31 The rejection must be served by certified mail or personal
32 service within 30 business days of receipt of the offer and must
33 specify the reasons known to the claimant for the rejection. If
34 the claimant believes the settlement offer omitted reference to
35 any portion of the claim, or was unreasonable in its terms, the
36 claimant must set forth those items of the claim the claimant

1 believes were omitted or why the settlement offer was
2 unreasonable.

3 (b) In an action subsequently brought, if the court or
4 arbitrator determines that the contractor has made a good faith
5 and reasonable offer of settlement of the claim under
6 subdivision 2 or 3, and that the claimant has rejected the
7 offer, the claimant may not recover an amount in excess of the
8 written settlement offer.

9 Subd. 8. [FAILURE TO COMPLY.] If a claimant accepts a
10 settlement offer pursuant to this section, and the contractor
11 fails to make the monetary payment or remedy the defect within
12 the agreed timetable, the claimant may, without further notice,
13 file a cause of action. The claimant may also file the
14 settlement offer and acceptance which will create a rebuttable
15 presumption that a binding and valid settlement agreement has
16 been created and should be enforced by the court or arbitrator.

17 Subd. 9. [ADDITIONAL DEFECTS.] A defect that is discovered
18 after the claimant has provided the original claim notice under
19 subdivision 1 may not be alleged in an action until the claimant
20 has provided the required notice and the contractor has been
21 given opportunity to respond, as provided by this section. If a
22 defect is alleged that directly relates to a defect for which
23 notice has been given under subdivision 1, the claimant may
24 include this information in a counter offer or provide
25 additional correspondence to the contractor without providing
26 notice in accordance with subdivision 1.

27 Sec. 3. [337A.03] [CONTRACT FOR SALE.]

28 A contractor must include, in every contract for the sale
29 of a dwelling to be completed and in every contract for the sale
30 of home improvement work, the notice required by this section.
31 The notice must be in at least 10-point bold type, if printed,
32 or in capital letters, if typewritten, and must state as follows:

33 "Minnesota law contains important procedures and
34 requirements you must follow before you may file a lawsuit for
35 defective construction against the contractor who constructed,
36 or performed construction on, your home. Failure to follow

1 these procedures and requirements may affect your ability to
2 file a lawsuit. You must serve a written notice on the
3 contractor of any construction conditions you believe to be
4 defective 90 business days before you file your lawsuit. A
5 contractor has the opportunity to make an offer to repair or pay
6 for the defects. You are not obligated to accept an offer made
7 by a contractor."

8 Sec. 4. [337A.04] [DISMISSAL; RELATION TO OTHER LAWS.]

9 (a) Except as provided in paragraph (b) or (c), if a
10 claimant has not complied with section 337A.02 before filing a
11 cause of action, the court or arbitrator with whom the action
12 has been filed shall dismiss the cause of action without
13 prejudice. The action may not be refiled until the claimant has
14 complied with section 337A.02.

15 (b) An action that includes a cause of action for damages
16 due to personal injury or death is not subject to dismissal
17 under section 337A.02.

18 (c) A claimant may file an action if delay would preclude
19 the action from being brought by section 541.051. However, the
20 court or arbitrator shall stay the proceedings pending
21 compliance with this section. This subdivision shall not be
22 construed to revive or extend any applicable statute of
23 limitation or repose periods set forth in section 541.051.
24 Notice under this chapter satisfies the notice requirements of
25 section 327A.03, clause (a).

26 (d) Nothing in this chapter creates a cause of action on
27 behalf of a claimant or contractor. Nothing in this chapter
28 limits a contractor's right to seek contribution, indemnity, or
29 recovery against a subcontractor, material supplier, or design
30 professional for any claim made against a contractor.

31 (e) Nothing in this chapter diminishes or enlarges the
32 rights or responsibilities of a claimant or of an insurer,
33 pursuant to contract or by law under any insurance contract. If
34 a contractor requests that its insurer indemnify the contractor
35 against a claim made in accordance with this chapter, the
36 insurer shall complete its investigation and inform the insured

1 contractor of acceptance or denial of the claim within 30
2 business days after receipt of notification of claim, as
3 required by section 72A.201, subdivision 4. If an insurer fails
4 to accept or deny a claim within 30 business days after receipt
5 of notification of the claim, the insurer waives its rights to
6 claim that the insured contractor's subsequent efforts to
7 resolve the claim violated the insurance contract's conditions
8 or prejudiced the insurer in any way.

9 Sec. 5. [337A.05] [LIMITATION.]

10 In any action relating to a dwelling involving a
11 construction defect, a contractor is not liable for:

12 (1) loss or damage described in section 327A.03;

13 (2) damages caused by the contractor's reliance on the
14 written directive of a local or state building official; or

15 (3) refusal by the claimant or predecessor claimant to
16 permit the contractor to perform warranty service work.

17 Sec. 6. [337A.06] [ACTIONS OF HOMEOWNER ASSOCIATIONS.]

18 Subdivision 1. [PROHIBITION.] (a) No person shall provide
19 or offer to provide anything of value, directly or indirectly,
20 to a property manager, member, or officer of an association, to
21 encourage or discourage the association to file an action for
22 damages arising from a construction defect.

23 (b) No property manager, member, or officer of an
24 association shall accept anything of value, directly or
25 indirectly, in exchange for encouraging or discouraging the
26 association from filing an action for damages arising from a
27 construction defect.

28 (c) Violation of this subdivision is a misdemeanor.

29 Subd. 2. [ACTION.] No association may bring an action for
30 damages arising from a construction defect against a contractor
31 unless:

32 (1) the action involves the common elements or limited
33 common elements of the common interest ownership community;

34 (2) the association obtains the written approval of each
35 unit's owner whose interest in the common elements or limited
36 common elements is the subject of the action;

1 (3) a vote of the units' owners to which at least a
2 majority of the votes of the members of the association are
3 allocated;

4 (4) the full board of directors of the association and the
5 contractor have met and conferred in a good faith attempt to
6 resolve the association's claim, or the contractor has declined
7 or ignored the requests to meet with the board of directors of
8 the association; and

9 (5) the association has complied with this chapter.

10 Subd. 3. [VOTE.] (a) At least three business days in
11 advance of voting to bring an action against a contractor, the
12 attorney representing the association shall provide each unit's
13 owner a written statement that includes, in reasonable detail:

14 (1) the defect and the nature and extent of damages or
15 injuries to the common elements or limited common elements
16 resulting from the defect, if known;

17 (2) the cause and location of the defect, if known;

18 (3) an estimate of the cost of the action, including
19 reasonable attorney's fees, costs, and fees, including expert
20 and testing fees; and

21 (4) all disclosures that the unit owner is required to make
22 upon sale of the unit.

23 (b) At least 21 calendar days in advance of voting to bring
24 an action against a contractor, the association must provide
25 written notice of each unit owner of the meeting at which the
26 vote will be considered.

27 Subd. 4. [TESTING.] An association or an attorney for an
28 association shall not employ a person to perform testing to
29 determine damage or injury to a unit, common element, or limited
30 common element, unless:

31 (1) the person is licensed under chapter 326;

32 (2) the association has obtained the prior written approval
33 of each unit's owner whose interest in the common elements or
34 limited common elements is the subject of the action;

35 (3) the person performing the tests is required to repair
36 all damage resulting from the test in accordance with state and

1 local law and has provided a written schedule for repairs; and
2 (4) prior notice and opportunity to observe the test is
3 given to the contractor against whom an action may be brought as
4 a result of the tests.

5 Subd. 5. [EXCEPTION.] The board of directors of an
6 association may, without giving notice, employ a contractor to
7 make immediate and necessary repairs to a unit or common element
8 within the common interest ownership community in order to
9 protect the health, safety, and welfare of the unit owners.

10 Sec. 7. [EFFECTIVE DATE.]

11 This act is effective the day following final enactment and
12 applies to all actions commenced on or after that date.

1 Senator moves to amend the committee engrossment
2 (SCS1287CE1) of S.F. No. 1287 as follows:

3 Page 4, lines 9 and 10, delete "performs in accordance
4 with, a" and insert "adequately completes the repairs or
5 construction described in the"

1 Senator moves to amend S.F. No. 1287 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [337A.01] [DEFINITIONS.]

4 Subdivision 1. [SCOPE.] For the purposes of this chapter,
5 the following terms have the meanings given.

6 Subd. 2. [ACTION.] An "action" or "cause of action" means
7 any civil lawsuit, judicial action, or where applicable,
8 arbitration asserting a claim in excess of \$7,500, including an
9 action under section 327A.05, in whole or in part, for damages
10 or other relief in connection with a dwelling or any failure to
11 construct a dwelling in accordance with any applicable code,
12 law, statute, ordinance, regulation, or contract caused by an
13 alleged construction defect.

14 Subd. 3. [ASSOCIATION.] An "association" has the meaning
15 given in section 515.02, subdivision 5; 515A.1-103, clause (3);
16 or 515B.1-103, clause (4).

17 Subd. 4. [BUSINESS DAY.] A "business day" means Monday
18 through Friday, excluding any holidays as defined in section
19 645.44.

20 Subd. 5. [CLAIMANT.] A "claimant" means any person,
21 association, corporation, or other entity that asserts a claim
22 relating to a construction defect.

23 Subd. 6. [CONSTRUCTION DEFECT.] A "construction defect" or
24 "defect" has the meaning assigned by an express, written
25 warranty provided by a contractor, or if no express warranty
26 provides a definition, means a matter concerning the design,
27 construction, or repair of a dwelling, of an alteration of or
28 repair or addition to an existing dwelling, or of an
29 appurtenance to a dwelling, on which a person has a complaint
30 against a contractor. A defect includes any physical damage to
31 the dwelling or any appurtenance, or the real property on which
32 the dwelling or appurtenance is affixed, caused by a
33 construction defect. A "major construction defect" has the
34 meaning given in section 327A.01, subdivision 5.

35 Subd. 7. [CONTRACTOR.] A "contractor" means a vendor, as
36 defined by section 327A.01, subdivision 7, and a home

1 improvement contractor, as defined by section 327A.01,
2 subdivision 10.

3 Subd. 8. [DWELLING.] A "dwelling" means a single-family
4 house, duplex, or multifamily unit designed for residential use
5 in which title to each individual unit is transferred to the
6 owner and shall include common areas and improvements that are
7 owned or maintained by an association or members of the
8 association. A dwelling includes the systems, other components,
9 improvements, other structures, or recreational facilities that
10 are appurtenant to the single-family house, duplex, or
11 multifamily unit at the time of its initial sale, but not
12 necessarily a part of the single-family house, duplex, or
13 multifamily unit.

14 Subd. 9. [PERSONAL SERVICE.] "Personal service" means
15 service that complies with Rule 4.03 of the Minnesota Rules of
16 Civil Procedure, or actual delivery proven by a signed receipt.

17 Sec. 2. [337A.02] [NOTICE AND OPPORTUNITY TO REPAIR.]

18 Subdivision 1. [NOTICE.] Not later than 90 business days
19 before commencing a cause of action, the claimant must provide
20 written notice to the contractor. The written notice must be
21 served by certified mail or personal service and must describe
22 in sufficient detail the defect that the claimant is claiming
23 has occurred. A contractor upon receiving written notice of a
24 potential claim must immediately provide the claimant with a
25 copy of the notice required under section 337A.06. The copy of
26 that notice must be served by certified mail or personal service.

27 Subd. 2. [RESPONSE.] Within 30 business days of receipt of
28 the notice in subdivision 1, the contractor must provide a
29 written response to the claimant. The response must be served
30 by certified mail or personal service and must:

31 (1) offer to settle the claim by a monetary payment, the
32 making of repairs, or a combination of both; or

33 (2) propose to inspect the dwelling that is the subject of
34 the claim.

35 Subd. 3. [INSPECTION; RESPONSE.] (a) If a proposal for
36 inspection is made under subdivision 2, the claimant, within 30

1 business days of receiving the response, must provide the
2 contractor with access to the dwelling in order to inspect and
3 document the claimed defect, and perform any testing reasonably
4 necessary to evaluate the nature, extent, and cause of the
5 claimed defect, and nature and extent of any repairs or
6 replacements that may be required to remedy the claimed defect.

7 (b) If the claimant has any testing conducted, it must be
8 performed by a person licensed under chapter 326 and prior
9 notice and opportunity to observe the testing must be given to
10 the contractor. Upon completion of testing, results must be
11 immediately provided to the contractor.

12 (c) Within 14 business days of completing the inspection
13 and testing under paragraph (a), the contractor must provide the
14 results of any testing, performed under paragraph (a) by a
15 person licensed under chapter 326, and a written response to the
16 claimant. The testing results and response must be served by
17 certified mail or personal service and must:

18 (1) make a specific offer to settle the claim by a monetary
19 payment, making repairs, or a combination of both; or

20 (2) state that the contractor will not proceed further to
21 remedy the claimed defect.

22 Subd. 4. [OFFER TO MAKE REPAIRS.] Any offer under
23 subdivision 2 or 3 to remedy the claimed defect by making
24 repairs shall include a detailed description of additional
25 construction necessary to remedy the defect and an anticipated
26 timetable for the completion of the construction.

27 Subd. 5. [ACCEPTANCE OF SETTLEMENT OFFER.] (a) If the
28 claimant accepts a settlement offer made in subdivision 2 or 3,
29 including a supplemental offer, the claimant must provide
30 written notice of the acceptance. The acceptance must be served
31 by certified mail or personal service within 30 business days of
32 receipt of the offer. The claimant may not commence an action
33 without responding to the settlement offer within 30 business
34 days of receipt of the offer.

35 (b) If the claimant accepts an offer to repair, the
36 claimant must provide the contractor with access to the dwelling

1 to complete the construction by the timetable agreed upon in the
2 settlement offer.

3 (c) If a claimant accepts, and a contractor performs in
4 accordance with, a settlement offer made under this section, the
5 claim is satisfied. The contractor is deemed to have been
6 legally obligated to make the repairs or monetary payment as if
7 the claimant had recovered a judgment against the contractor in
8 the amount of the cost of repairs or monetary payment, or a
9 combination of both.

10 (d) If a subsequent defect is alleged, the claimant must
11 provide notice to the contractor as provided by subdivision 1.

12 Subd. 6. [REJECTION OF CLAIM; FAILURE TO RESPOND; FAILURE
13 TO PROVIDE NOTICE.] The claimant may, without further notice or
14 delay, commence a cause of action if the contractor:

15 (1) rejects the claim and will neither remedy the defect
16 nor settle the claim as provided in subdivision 2 or 3;

17 (2) fails to serve a response to the claimant as required
18 by subdivision 2 or 3; or

19 (3) fails to provide the notice required by section 337A.03.

20 Subd. 7. [REJECTION OF SETTLEMENT OFFER.] (a) Within 15
21 business days of receiving a claimant's rejection of a
22 settlement offer made under subdivision 3, paragraph (c), the
23 contractor may make a supplemental offer to settle the claim by
24 a monetary payment, making repairs, or a combination of both.

25 (b) If the claimant rejects a settlement offer made in
26 subdivision 2 or 3, including a supplemental offer, the claimant
27 must provide written notice of the rejection prior to commencing
28 an action. The rejection must be served by certified mail or
29 personal service within 30 business days of receipt of the offer
30 and must specify the reasons known to the claimant for the
31 rejection. If the claimant believes the settlement offer
32 omitted reference to any portion of the claim, or was
33 unreasonable in its terms, the claimant must set forth those
34 items of the claim the claimant believes were omitted or why the
35 settlement offer was unreasonable.

36 (c) In an action subsequently brought, if the court or

1 arbitrator determines that the contractor has made a good faith
2 and reasonable offer of settlement of the claim under
3 subdivision 2 or 3, and that the claimant has rejected the
4 offer, the claimant may not recover an amount in excess of the
5 written settlement offer.

6 Subd. 8. [FAILURE TO COMPLY.] If a claimant accepts a
7 settlement offer pursuant to this section, and the contractor
8 fails to make the monetary payment or remedy the defect within
9 the agreed timetable, the claimant may, without further notice,
10 commence a cause of action. The claimant may also file the
11 settlement offer and acceptance which will create a rebuttable
12 presumption that a binding and valid settlement agreement has
13 been created and should be enforced by the court or arbitrator.

14 Subd. 9. [ADDITIONAL DEFECTS.] A defect that is discovered
15 after the claimant has provided the original claim notice under
16 subdivision 1 may not be alleged in an action until the claimant
17 has provided the required notice with respect to the additional
18 defect and the contractor has been given opportunity to respond,
19 as provided by this section. If a defect is alleged that
20 directly relates to a defect for which notice has been given
21 under subdivision 1, the claimant may include this information
22 in a counter offer or provide additional correspondence to the
23 contractor without providing notice in accordance with
24 subdivision 1.

25 Subd. 10. [EXCEPTION.] Without waiving a right to pursue a
26 claim, a claimant may, without giving notice, employ a
27 contractor to make immediate and necessary repairs to a dwelling
28 in imminent peril to protect the health, safety, and welfare of
29 the claimant.

30 Sec. 3. [337A.03] [DISMISSAL; RELATION TO OTHER LAWS.]

31 (a) Except as provided in paragraph (b) or (c), if a
32 claimant has not complied with section 337A.02 before commencing
33 a cause of action, the court or arbitrator with whom the action
34 has been filed shall dismiss the cause of action without
35 prejudice. The action may not be commenced again until the
36 claimant has complied with section 337A.02.

1 (b) An action that includes a cause of action for damages
2 due to personal injury or death is not subject to dismissal for
3 failure to comply with section 337A.02.

4 (c) Any applicable statute of limitations, including
5 without limitation section 541.051, is tolled from the date of
6 service of notice of a claim until written rejection or
7 termination of negotiations under this chapter.

8 (d) A claimant may commence an action if delay would
9 preclude the action from being brought by section 541.051.
10 However, the court or arbitrator shall stay the proceedings
11 pending compliance with this section. This subdivision shall
12 not be construed to revive or extend any applicable statute of
13 limitation or repose periods set forth in section 541.051.
14 Notice under this chapter satisfies the notice requirements of
15 section 327A.06, clause (a).

16 (e) Nothing in this chapter creates a cause of action on
17 behalf of a claimant or contractor. Nothing in this chapter
18 limits a contractor's right to seek contribution, indemnity, or
19 recovery against a subcontractor, material supplier, or design
20 professional for any claim made against a contractor.

21 (f) Nothing in this chapter diminishes or enlarges the
22 rights or responsibilities of a claimant or of an insurer,
23 pursuant to contract or by law under any insurance contract. If
24 a contractor requests that an insurer indemnify the contractor
25 against a claim under this chapter, the insurer must follow the
26 standards for claim filing and handling required by section
27 72A.201, subdivision 4. If an insurer fails to accept or deny a
28 claim within 30 business days after receipt of notification of
29 the claim, the insurer waives its rights to claim that the
30 insured contractor's subsequent efforts to resolve the claim
31 violated the insurance contract's conditions or prejudiced the
32 insurer in any way.

33 Sec. 4. [337A.04] [LIMITATION.]

34 (a) In any action relating to a dwelling involving a
35 construction defect, a contractor is not liable for loss or
36 damages from any defect that is unrepaired due to refusal by the

1 claimant or predecessor claimant to permit the contractor to
2 perform warranty service work.

3 (b) Absent an actual construction defect, as defined under
4 this chapter, compliance with a written authorization or
5 directive of a local or state building official bars a claim
6 that a contractor has failed to comply with the building code.

7 Sec. 5. [337A.05] [COMMON INTEREST COMMUNITIES.]

8 Subdivision 1. [PROHIBITION.] (a) No person shall provide
9 or offer to provide anything of value, directly or indirectly,
10 to a property manager, member, or officer of an association, to
11 encourage or discourage the association to commence an action
12 for damages arising from a construction defect, provided that
13 nothing in this section prohibits an attorney from offering to
14 provide or providing legal services.

15 (b) No property manager, member, or officer of an
16 association shall accept anything of value, directly or
17 indirectly, in exchange for encouraging or discouraging the
18 association from commencing an action for damages arising from a
19 construction defect.

20 (c) Violation of this subdivision is a misdemeanor.

21 Subd. 2. [ACTION.] No association may bring an action
22 arising from a construction defect against a contractor unless
23 this action is to institute, defend, or intervene in litigation
24 or administrative proceedings (i) in its own name on behalf of
25 itself or two or more unit owners on matters affecting the
26 common elements or other matters affecting the association; or
27 (ii) with the consent of the owners of the affected units on
28 matters affecting only those units. If an association brings an
29 action, it must follow procedures consistent with chapter 515B
30 or the association's bylaws, whichever is more restrictive.

31 Sec. 6. [337A.06] [CONTRACT FOR SALE.]

32 A contractor must include, in every contract for the sale
33 of a dwelling to be completed and in every contract for the sale
34 of home improvement work, the notice required by this section.
35 The notice must be in at least 10-point bold type, if printed,
36 or in capital letters, if typewritten, and must state as follows:

1 "Minnesota law contains important procedures and
2 requirements you must follow before you may commence a lawsuit
3 for defective construction against the contractor who
4 constructed, or performed construction on, your home. Failure
5 to follow these procedures and requirements may affect your
6 ability to commence a lawsuit. You must serve a written notice
7 on the contractor of any construction conditions you believe to
8 be defective 90 business days before you file your lawsuit. A
9 contractor has the opportunity to make an offer to repair or pay
10 for the defects. You are not obligated to accept an offer made
11 by a contractor."

12 Sec. 7. [EFFECTIVE DATE.]

13 This act is effective the day following final enactment and
14 applies to all actions commenced on or after that date."

15 Amend the title accordingly

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 1, lines 7 and 8, delete ", judicial action, or where
4 applicable, arbitration"

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 2, line 16, delete everything after "delivery" and
4 insert "of the notice to the contractor."

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 2, line 23, delete everything after the period

4 Page 2, delete lines 24 to 26

- 1 Senator moves to amend the delete-everything
- 2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:
- 3 Page 3, delete lines 7 to 11
- 4 Page 3, line 12, delete "(c)" and insert "(b)"

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 3, lines 33 and 34, delete "within 30 business days of
4 receipt of the offer"

- 1 Senator moves to amend the delete-everything
- 2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:
- 3 Page 4, line 29, after "offer" insert a period
- 4 Page 4, delete lines 30 to 36
- 5 Page 5, delete lines 1 to 5

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 5, line 11, delete everything after "acceptance" and
4 insert "as a confession of judgment against the contractor to be
5 enforced by the court. A claimant shall be entitled to costs,
6 including reasonable attorney fees, for enforcing a settlement
7 made pursuant to this chapter."

8 Page 5, delete lines 12 and 13

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 7, delete section 5

4 Renumber the sections in sequence and correct the internal
5 references

6 Amend the title accordingly

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 8, delete lines 13 and 14, and insert:

4 "This act is effective on January 1, 2006, and applies to
5 actions arising from contracts entered into on or after that
6 date."

1 Senator moves to amend the delete-everything
2 amendment (SCS1287A-9) to S.F. No. 1287 as follows:

3 Page 5, after line 5, insert:

4 "(d) If the claimant prevails in the action and the court
5 finds that the relief allowed to the claimant has a value equal
6 to or greater than 110 percent of the highest value of any
7 settlement offered by the defendant, the court shall award
8 reasonable attorney fees, costs, and disbursements to the
9 claimant."

1 Senator moves to amend S.F. No. 1287 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [337A.01] [DEFINITIONS.]

4 Subdivision 1. [SCOPE.] For the purposes of this chapter,
5 the following terms have the meanings given.

6 Subd. 2. [ACTION.] An "action" or "cause of action" means
7 any civil lawsuit, or where applicable, arbitration asserting a
8 claim in excess of \$7,500, including an action under section
9 327A.05, in whole or in part, for damages or other relief in
10 connection with a dwelling or any failure to construct a
11 dwelling in accordance with any applicable code, law, statute,
12 ordinance, regulation, or contract caused by an alleged
13 construction defect.

14 Subd. 3. [ASSOCIATION.] An "association" has the meaning
15 given in section 515.02, subdivision 5; 515A.1-103, clause (3);
16 or 515B.1-103, clause (4).

17 Subd. 4. [BUSINESS DAY.] A "business day" means Monday
18 through Friday, excluding any holidays as defined in section
19 645.44.

20 Subd. 5. [CLAIMANT.] A "claimant" means any person,
21 association, corporation, or other entity that asserts a claim
22 relating to a construction defect.

23 Subd. 6. [CONSTRUCTION DEFECT.] A "construction defect" or
24 "defect" means a matter concerning the design, construction, or
25 repair of a dwelling, of an alteration of or repair or addition
26 to an existing dwelling, or of an appurtenance to a dwelling, on
27 which a person has a complaint against a contractor.

28 Subd. 7. [CONTRACTOR.] A "contractor" means a vendor, as
29 defined by section 327A.01, subdivision 7, and a home
30 improvement contractor, as defined by section 327A.01,
31 subdivision 10.

32 Subd. 8. [DWELLING.] A "dwelling" means a single-family
33 house, duplex, or multifamily unit designed for residential use
34 in which title to each individual unit is transferred to the
35 owner and shall include common areas and improvements that are
36 owned or maintained by an association or members of the

1 association. A dwelling includes the systems, other components,
2 improvements, other structures, or recreational facilities that
3 are appurtenant to the single-family house, duplex, or
4 multifamily unit at the time of its initial sale, but not
5 necessarily a part of the single-family house, duplex, or
6 multifamily unit.

7 Sec. 2. [337A.02] [NOTICE AND OPPORTUNITY TO REPAIR.]

8 Subdivision 1. [NOTICE.] Not later than 90 business days
9 before commencing a cause of action, the claimant must provide
10 written notice sent by United States mail to the contractor.
11 The written notice must describe the defect.

12 Subd. 2. [RESPONSE.] Within 30 business days of receipt of
13 the notice in subdivision 1, the contractor must provide a
14 written response to the claimant. The response must be sent by
15 United States mail and must:

16 (1) make a settlement offer; or
17 (2) propose to inspect the dwelling that is the subject of
18 the claim.

19 Subd. 3. [INSPECTION; RESPONSE.] (a) If a proposal for
20 inspection is made under subdivision 2, the claimant, within 30
21 business days of receiving the response, must provide the
22 contractor with access to the dwelling in order to inspect and
23 document the claimed defect, and perform any testing reasonably
24 necessary to evaluate the nature, extent, and cause of the
25 claimed defect, and nature and extent of any repairs or
26 replacements that may be required to remedy the claimed defect.

27 (b) If the claimant has any testing conducted, prior notice
28 and opportunity to observe the testing must be given to the
29 contractor. Upon completion of testing, results must be
30 immediately provided to the contractor.

31 (c) Within 14 business days of completing the inspection
32 and testing under paragraph (a), the contractor must provide the
33 results of any testing to the claimant by United States mail and
34 must:

35 (1) make a settlement offer; or
36 (2) state that the contractor will not proceed further to

1 remedy the claimed defect.

2 Subd. 4. [OFFER TO MAKE REPAIRS.] Any offer under
3 subdivision 2 or 3 to remedy the claimed defect by making
4 repairs shall include a detailed description of additional
5 construction necessary to remedy the defect and an anticipated
6 timetable for the completion of the construction.

7 Subd. 5. [ACCEPTANCE OF SETTLEMENT OFFER.] (a) If the
8 claimant accepts a settlement offer made in subdivision 2 or 3,
9 including a supplemental offer, the claimant must provide
10 written notice of the acceptance. The acceptance must be sent
11 by United States mail within 30 business days of receipt of the
12 offer. The claimant may commence an action after rejecting the
13 settlement offer. The rejection must be sent to the contractor
14 by United States mail.

15 (b) If the claimant accepts an offer to repair, the
16 claimant must provide the contractor with access to the dwelling
17 to complete the construction by the timetable agreed upon in the
18 settlement offer.

19 (c) If a claimant accepts, and a contractor performs in
20 accordance with, a settlement offer made under this section, the
21 claim is fully satisfied. The contractor is deemed to have been
22 legally obligated to perform as if the claimant had recovered a
23 judgment against the contractor.

24 (d) If a subsequent defect is alleged, the claimant must
25 provide notice to the contractor as provided by subdivision 1.

26 Subd. 6. [REJECTION OF CLAIM; FAILURE TO RESPOND; FAILURE
27 TO PROVIDE NOTICE.] The claimant may, without further notice or
28 delay, commence a cause of action if the contractor:

29 (1) rejects the claim and will neither remedy the defect
30 nor settle the claim as provided in subdivision 2 or 3; or

31 (2) fails to respond to the claimant as required by
32 subdivision 2 or 3.

33 Subd. 7. [BAD FAITH.] In an action subsequently brought,
34 if the court or arbitrator determines that either party has
35 acted in bad faith, the prevailing party may recover costs,
36 including attorney fees.

1 Subd. 8. [FAILURE TO COMPLY.] If a claimant accepts a
2 settlement offer pursuant to this section, and the contractor
3 fails to perform as agreed, the claimant may, without further
4 notice, commence a cause of action. The claimant may be
5 entitled to costs, including reasonable attorney fees, for
6 enforcing a settlement made pursuant to this chapter.

7 Subd. 9. [ADDITIONAL DEFECTS.] If a defect is alleged that
8 directly relates to a defect for which notice has been given
9 under subdivision 1, the claimant may provide this information
10 in correspondence to the contractor without providing notice in
11 accordance with subdivision 1.

12 Subd. 10. [EXCEPTION.] Without waiving a right to pursue a
13 claim, a claimant may, without giving notice, employ a
14 contractor to make immediate and necessary repairs to a dwelling
15 in imminent peril to protect the health, safety, and welfare of
16 the claimant.

17 Sec. 3. [337A.03] [DISMISSAL; RELATION TO OTHER LAWS.]

18 (a) Except as provided in paragraph (b) or (c), if a
19 claimant has not complied with section 337A.02 before commencing
20 a cause of action, the court or arbitrator with whom the action
21 has been filed shall dismiss the cause of action without
22 prejudice. The action may not be commenced again until the
23 claimant has complied with section 337A.02.

24 (b) An action that includes a cause of action for damages
25 due to personal injury or death is not subject to dismissal for
26 failure to comply with section 337A.02.

27 (c) Any applicable statute of limitations, including
28 without limitation section 541.051, is tolled from the date of
29 postmark on the notice of claim sent by United States mail until
30 written rejection or termination of negotiations under this
31 chapter.

32 (d) This subdivision shall not be construed to revive or
33 extend any applicable statute of limitation or repose periods
34 set forth in section 541.051. Notice under this chapter
35 satisfies the notice requirements of section 327A.06, clause (a).

36 (e) Nothing in this chapter creates a cause of action on

1 behalf of a claimant or contractor. Nothing in this chapter
2 limits a contractor's right to seek contribution, indemnity, or
3 recovery against a subcontractor, material supplier, or design
4 professional for any claim made against a contractor.

5 (f) Nothing in this chapter diminishes or enlarges the
6 rights or responsibilities of a claimant or of an insurer,
7 pursuant to contract or by law under any insurance contract. If
8 a contractor requests that an insurer indemnify the contractor
9 against a claim under this chapter, the insurer must follow the
10 standards for claim filing and handling required by section
11 72A.201, subdivision 4. If an insurer fails to accept or deny a
12 claim within 30 business days after receipt of notification of
13 the claim, the insurer waives its rights to claim that the
14 insured contractor's subsequent efforts to resolve the claim
15 violated the insurance contract's conditions or prejudiced the
16 insurer in any way.

17 Sec. 4. [337A.04] [LIMITATION.]

18 (a) A contractor is not liable for loss or damages from any
19 defect that is unrepaired due to refusal by the claimant or
20 predecessor claimant to permit the contractor to perform
21 warranty service work.

22 (b) Absent an actual construction defect, as defined under
23 this chapter, compliance with a written authorization or
24 directive of a local or state building official bars a claim
25 that a contractor has failed to comply with the building code.

26 Sec. 5. [337A.05] [CONTRACT FOR SALE.]

27 A contractor must include, in every contract for the sale
28 of a dwelling to be completed and in every contract for the sale
29 of home improvement work, the following notice:

30 "Minnesota law contains important procedures and
31 requirements you must follow before you may commence a lawsuit
32 for defective construction against the contractor who
33 constructed, or performed construction on, your home. Failure
34 to follow these procedures and requirements may affect your
35 ability to commence a lawsuit. You must serve a written notice
36 on the contractor of any construction conditions you believe to

1 be defective 90 business days before you file your lawsuit. A
2 contractor has the opportunity to make an offer to repair or pay
3 for the defects. You are not obligated to accept an offer made
4 by a contractor."

5 Sec. 7. [EFFECTIVE DATE.]

6 This act is effective the day following final enactment and
7 applies to all actions arising from contracts entered into on or
8 after that date."

9 Amend the title accordingly

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1143 - Domestic Abuse No Contact Order

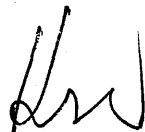
Author: Senator Jane B. Ranum

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 8, 2005

S.F. No. 1143 amends the domestic abuse law by enlarging the definition of a “domestic abuse no contact order” to include orders in criminal proceedings relating to violations of protection orders, violations of domestic abuse no contact orders, and harassment/stalking.

HW:cs



1 Senator moves to amend S.F. No. 1143 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 518B.01,
4 subdivision 22, is amended to read:

5 Subd. 22. [VIOLATION OF A DOMESTIC ABUSE NO CONTACT
6 ORDER.] (a) A domestic abuse no contact order is an order issued
7 by a court against a defendant in a criminal proceeding for:

8 (1) domestic abuse;

9 (2) harassment or stalking charged under section 609.749
10 and committed against a family or household member;

11 (3) violation of an order for protection charged under
12 subdivision 14; or

13 (4) violation of a prior domestic abuse no contact order
14 charged under this subdivision.

15 It includes pretrial orders before final disposition of the case
16 and probationary orders after sentencing.

17 (b) A person who knows of the existence of a domestic abuse
18 no contact order issued against the person and violates the
19 order is guilty of a misdemeanor.

20 (c) A peace officer shall arrest without a warrant and take
21 into custody a person whom the peace officer has probable cause
22 to believe has violated a domestic abuse no contact order, even
23 if the violation of the order did not take place in the presence
24 of the peace officer, if the existence of the order can be
25 verified by the officer. The person shall be held in custody
26 for at least 36 hours, excluding the day of arrest, Sundays, and
27 holidays, unless the person is released earlier by a judge or
28 judicial officer. A peace officer acting in good faith and
29 exercising due care in making an arrest pursuant to this
30 paragraph is immune from civil liability that might result from
31 the officer's actions."

1 Senator Betzold from the Committee on Judiciary, to which
2 was referred

3 S.F. No. 1143: A bill for an act relating to domestic
4 abuse; expanding the applicability of the domestic abuse no
5 contact order; amending Minnesota Statutes 2004, section
6 518B.01, subdivision 22.

7 Reports the same back with the recommendation that the bill
8 be amended as follows:

9 Delete everything after the enacting clause and insert:

10 "Section 1. Minnesota Statutes 2004, section 518B.01,
11 subdivision 22, is amended to read:

12 Subd. 22. [~~VIOLATION-OF-A~~ DOMESTIC ABUSE NO CONTACT
13 ORDER.] (a) A domestic abuse no contact order is an order issued
14 by a court against a defendant in a criminal proceeding for:

15 (1) domestic abuse;

16 (2) harassment or stalking charged under section 609.749
17 and committed against a family or household member;

18 (3) violation of an order for protection charged under
19 subdivision 14; or

20 (4) violation of a prior domestic abuse no contact order
21 charged under this subdivision.

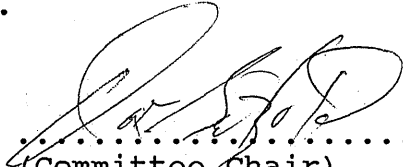
22 It includes pretrial orders before final disposition of the case
23 and probationary orders after sentencing.

24 (b) A person who knows of the existence of a domestic abuse
25 no contact order issued against the person and violates the
26 order is guilty of a misdemeanor.

27 (c) A peace officer shall arrest without a warrant and take
28 into custody a person whom the peace officer has probable cause
29 to believe has violated a domestic abuse no contact order, even
30 if the violation of the order did not take place in the presence
31 of the peace officer, if the existence of the order can be
32 verified by the officer. The person shall be held in custody
33 for at least 36 hours, excluding the day of arrest, Sundays, and
34 holidays, unless the person is released earlier by a judge or
35 judicial officer. A peace officer acting in good faith and
36 exercising due care in making an arrest pursuant to this
37 paragraph is immune from civil liability that might result from
38 the officer's actions."

1 And when so amended the bill do pass and be re-referred to
2 the Committee on Crime Prevention and Public Safety. Amendments
3 adopted. Report adopted.

4
5
6
7
8
9


.....
(Committee Chair)

March 22, 2005.....
(Date of Committee recommendation)

1 Senator Betzold from the Committee on Judiciary, to which
2 was re-referred

3 S.F. No. 1603: A bill for an act relating to railroads;
4 prohibiting railroad company from obstructing treatment of
5 railroad worker injured on the job or from disciplining or
6 threatening to discipline injured railroad employee for
7 requesting treatment or first aid; proposing coding for new law
8 in Minnesota Statutes, chapter 219.

9 Reports the same back with the recommendation that the bill
10 be amended as follows:

11 Page 1, lines 20 and 21, delete "The commissioner of
12 transportation may issue an order assessing" and insert "A
13 person who believes that the person has been affected by a
14 violation of section 1 may file a complaint with the
15 commissioner of labor and industry who shall refer it to the
16 Office of Administrative Hearings for consideration as a
17 contested case. Upon finding a violation, the administrative
18 law judge may assess"

19 Page 1, line 24, delete "commissioner" and insert
20 "administrative law judge"

21 Page 2, line 4, delete "an expedited administrative hearing
22 or"

23 Page 2, line 5, delete everything after the period

24 Page 2, delete line 6

25 Page 2, line 7, delete everything before "Judicial"

26 Page 2, delete lines 10 to 13

27 And when so amended the bill do pass and be re-referred to
28 the Committee on Jobs, Energy and Community Development.
29 Amendments adopted. Report adopted.

30
31 
32
33 (Committee Chair)

34 March 22, 2005.....
35 (Date of Committee recommendation)

1 Senator moves to amend S.F. No. 1603 as follows:

2 Page 1, lines 20 and 21, delete "The commissioner of
3 transportation may issue and order assessing" and insert "A
4 person who believes that the person has been affected by a
5 violation of section 1 may file a complaint with the
6 commissioner of labor and industry who shall refer it to the
7 office of administrative hearings for consideration as a
8 contested case. Upon finding a violation, the administrative
9 law judge may assess"

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11 "administrative law judge"

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13 or"

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15 Page 2, delete line 6

16 Page 2, line 7, delete everything before "Judicial"

17 Page 2, delete lines 10 to 13

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
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JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1603 - Railroad Worker Injuries

Author: Senator Mee Moua

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 21, 2005



Section 1 makes it unlawful for a railroad to delay treatment of an injured employee or to discipline an employee for requesting medical treatment.

Section 2 allows the Commissioner of Transportation to impose a fine up to \$10,000 for a violation and provides for administrative and judicial hearings and enforcement by the Attorney General.

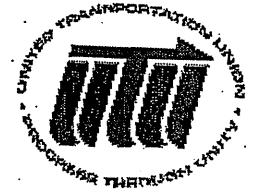
HW:cs

Phillip J. Qualy
Legislative Director,
Chairperson

Robert J. Pearson
Assistant Director

Richard A. Olson
Secretary

united
transportation
union
Minnesota Legislative Board



Labor and Professional Centre
411 Main Street, Suite 212
St. Paul, MN 55102
(651) 222-7500
FAX (651) 222-7828
E-MAIL:
UTUMNLEGBD@VISI.COM

March 22, 2005

The Honorable Don Betzold
State of Minnesota
111 State Capitol
St. Paul, MN 55155

RE: Senate File 1603: Injured Railroad Workers Emergency Medical Treatment Bill.

Dear Senator Betzold,

Today the United Transportation Union, joined by other railroad unions in this state, brings forward Senate File 1603. This bill relates to railroads, crimes, and addresses a disturbing pattern of conduct by railroad management personnel.

Since the year 2003 and as recently as February 2005, the carriers have intentionally denied, delayed, and interfered with the first-aid medical treatment of injured railroad workers. If passed into law, Senate File 1603 will make this conduct unlawful.

The United Transportation Union is the exclusive bargaining agent for Trainmen, Conductors, Remote Control Locomotive Operators, and Yardmasters in Minnesota and nationwide.

On behalf of the railroad workers in Minnesota, thank you for the opportunity to have this matter heard before the Senate Judiciary Committee.


Phillip Qualy

State Legislative Director,
United Transportation Union

PAUL C. THOMPSON
International President

RICK L. MARCEAU
Assistant President

DAN E. JOHNSON
General Secretary and Treasurer

united
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union



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Associate General Counsel

ROBERT L. McCARTY
Associate General Counsel

DANIEL R. ELLIOTT, III
Associate General Counsel

Fax and Regular Mail

February 18, 2005

Mr. P. J. Qualy, Director
Minnesota State Legislative Board
3989 Central Ave., N.E., Ste. 525
Columbia Heights, MN 55421

Dear Mr. Qualy:

This is in response to your February 8, 2005 letter regarding the bill amending Chapter 609 of the Minnesota statutes to add Section 609.849. That bill makes it unlawful for any railroad or person employed by the railroad to deny, delay or interfere with medical treatment or aid to any employee who has been injured. A question has been raised concerning possible preemption.

Preemption occurs in three ways: (1) Congress may pass a statute that by its express terms preempts state law; (2) Congress, though not expressly stating, may imply that it is preempting state law by occupation of an entire field of regulation, so that no room is left for supplementary state regulation; (3) Congress may speak neither expressly nor impliedly of preemption, nonetheless state law is preempted to the extent it actually conflicts with federal law; such a conflict occurs when (a) compliance with both state and federal law is impossible, or (b) when state law stands as an impediment to a federal purpose. *Michigan Canners and Freezers Assoc. v. Agricultural Mktg. and Bargaining Bd.*, 467 U.S. 461, 469 (1984).

One of the leading Supreme Court cases on the issue of preemption is *CSX v. Easterwood*, 507 U.S. 658 (1993), which held that state law is not preempted unless federal regulation "substantially subsumes" the particular state regulation. See also, *In re: Miamisburg Train Derailment Litigation*, 626 N.E. 2d 85 (Ohio 1994) (tank cars); *Southern Pacific Railroad v. P.U.C. of State of Oregon*, 9 F.3d 807 (9th Cir. 1993) (locomotive whistles); *Norfolk & Western Railway Company v. Pennsylvania Public Utilities Commission*, 413 A.2d 1037 (1980) (flush type toilets); *National Association of Regulatory Utility Commissioners v. Coleman*, 542 F.2d 11 (3d Cir. 1976) (accident reporting); *State of Washington v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 484 P.2d 1146 (Wash. 1971) (spark arresters); *Bessemer and Lake Erie R.R. v. Pennsylvania Public Utilities Commission*, 368 A.2d 1305 (1977) (flagging); *State by E. I. Malone v. Burlington Northern*, 247 N.W. 2d 54 (Minn. 1976) (blue signal); and *State ex ref. Utilities Commission v. Seaboard Coastline R.R.*, 303 S.E. 2d 549 (N.C. 1983) (open drainage ditches).

Here, it does not appear that any federal regulation has "substantially subsumed" the area addressed by the bill in question. While the FRA does address accident reporting in 49 C.F.R. § 225, that section only requires that carriers make timely and accurate accident reports and maintain certain records. It does not speak to medical treatment or aid to injured employees. Nor does it appear that the FRA has issued any other regulation that directly, or even indirectly, addresses the substance of proposed law regarding medical treatment. Similarly, it does not appear that any part of the Federal Employers Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, addresses or deals with medical treatment for injured employees.

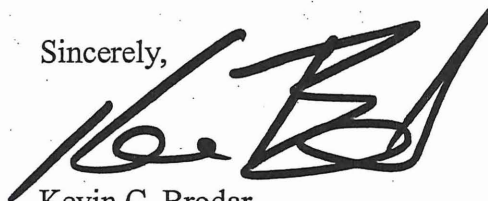
This analysis is not significantly different from that applied to a Wisconsin statute requiring two person crews. There, the carriers argued that such state regulation was preempted. Their arguments however succeeded only with respect to hostling and helper service. *Burlington Northern & Santa Fe Ry., v. Doyle*, 186 F.3d 790 (7th Cir. 1999). Here, not only is there no federal statute or regulation addressing the matter, but also the safety and health of the citizenry of the state is a legitimate state interest, just as was the two person crew law. Indeed, a much stronger safety issue could be asserted here.

[W]hen a state legitimately asserts the existence of a safety justification for a regulation . . . the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce

Bibb v. Navaho Freight Lines, Inc., 359 U.S. 520, 524 (1959). See *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Rock Island & Pacific Railroad*, 393 U.S. 129, 140 (1968); *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 449 (1978); *Kassel v. Consolidated Freightways Corporation*, 450 U.S. 662 (1981). The proposed legislation places an insignificant burden on railroads within the state in light of the compelling need for the state to promote the safety of its citizens.

We think it is fairly clear given the history and current state of the law that the state regulation regarding medical treatment is not preempted.

Sincerely,



Kevin C. Brodar
Associate General Counsel

cc: P. C. Thompson, International President
R. L. Marceau, Assistant President
J. M. Brunkenhoefer, U.S. National Legislative Director
C. J. Miller, III, General Counsel

United Transportation Union

General Committee of Adjustment GO-261

SOO LINE R.R.

D. E. Baker, Chairman
6053 Hudson Road
Suite #162
Woodbury, MN 55125-1015
Office: 651-714-5201
FAX: 651-714-5512



Executive Committee
J. H. Nelson, Vice Chrm.
T. J. Morris, Vice Chrm.
R. G. Long, Vice Chrm.
R. J. Hill, Secretary

Mail: utugo261@aol.com
February 18, 2005

File: 36-NN/36-N

Mr. R. Ritchie, CEO
Canadian Pacific Railway
Ste. 500 Gulf Canada Square
401 - 9th Avenue SW
Calgary, AB, CANADA T2P 4Z4

Dear Sir:

I am in receipt of a February 7, 2005 letter to you from BMWED General Chairman M. S. Wimmer concerning safety on the Soo Line Railroad.

I agree with Chairman Wimmer that employes are harassed and intimidated if they submit a Personal Injury Report as required by the rules. I don't believe injuries are down, just the reporting of them. When an employee puts in a Personal Injury Report they are asked if they really want to submit it or wait and see if they are really injured. This by the way, is against all rules; be it Carrier or FRA.

On February 4, 2005 one of my members slipped on snow covered ice and fell on her ankle. She had the engineer call for an ambulance, but the road manager heard this on his radio and cancelled the call for the ambulance. She then crawled through the snow to get to a shanty to wait for the road manager; this is when her Hours of Service expired. Her wait for the road manager was about thirty-five to forty minutes. The road manager arrived, took her to a hospital where it was diagnosed as a broken ankle. She was instructed to get to a hospital that had an orthopedic specialist so that he could set the ankle as soon as possible. Instead, the road manager took her back to the site and wanted more information.

This incident is now out on the property and my members comments are, "The Carrier sure doesn't care if we are injured, even though safety is preached but, obviously not practiced by them." We are now waiting to see if an investigation will be called. If it isn't, it will only be because the road manager will be in trouble for canceling the ambulance.

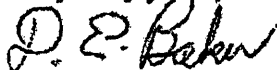
Mr. R. Ritchie, CEO
February 18, 2005
File: 36-NN/36-N
Page 2

The United Transportation Union is very interested in the safety of our members and we work with the local safety committees throughout the Soo Line property. Safety also should be included in work rest and absenteeism, but it isn't, and my members feel very strongly that it should be a factor.

I strongly agree with General Chairman Wimmer that CPRS' corporate performance pay incentive should be looked into more closely, as it can corrupt the entire safety process.

Thank you for your time.

Very truly yours,



D. E. Baker
General Chairman

cc: R. E. Wilson, General Manager Field Operations
C. S. Frankenberg, AVP Labor Relations & Human Resources-US
L. J. Kissel, Service Area Manager-Chicago
Local Chairmen

UNITED TRANSPORTATION UNION

CLYDE P. LARSON- GENERAL CHAIRMAN

4077 Misty Morning Drive
Hermantown, Minnesota 55811

January 17, 2005

Federal Railroad Administration
Attn. Larry Hasbold
200 West Adams-Suite 310
Chicago, Il. 60606

Dear Mr. Hasbold:

I am writing this day to report an incident on the Duluth, Missabe and Iron Range Railway Company/CN that I believe is a violation of the current FRA regulations.

On November 9, 2004 employee [REDACTED] was working a road assignment based out of Proctor Minnesota. He was injured due to a slip on taconite pellets while lining himself into the yard.

He was taken to the emergency room for examination to his knee. In the examination room, the doctor just starting his exam, was interrupted by supervisor [REDACTED], who insisted that his reports needed to be filled out immediately. [REDACTED] had also been given pain medication through an I.V. prior to this.

[REDACTED] was required to fill out accident reports with this supervisor while being examined by the doctor. He was uninvited and did not ask Mr. Stahl's permission. Your operating practices specialist Bob Portchee tells me this is in violation of Section 225 of the FRA Regulations.

After his treatment Claims Agent [REDACTED] drove the employee to his home, but first demanded they return to the site of the accident for [REDACTED] to examine, this was in the opposite direction of [REDACTED]'s home, which is an hour drive from the Proctor Yard. Upon returning him to his home, Mr. Wollack insisted that he give his formal statement for the record. All of this was protested by [REDACTED] who informed him that he was in pain, and under medication for the pain.

Please advise as to your opinion of this incident.

Sincerely,

Clyde P. Larson-General Chairman
cc:Phil Qually-State Legislative Director



U.S. Department
of Transportation

Federal Railroad
Administration

Region VI

H2004-UP-6-003010

DOT Building
901 Locust Street, Suite 464
Kansas City, MO 64106

March 1, 2005

Mr. Philip Qualy, Legislative Director, Chairperson
Minnesota Legislative Board
United Transportation Union
3989 Central Avenue NE, Suite 525
Columbia Heights, Minnesota 55421-3900

Dear Mr. Qualy:

This is in response to your letter dated September 28, 2004, concerning the alleged violation of the Federal Hours of Service Law (HSL) by the Union Pacific Railroad Company (UP) following an on-duty injury at Mason City, Iowa, on December 4, 2003.

The Federal Railroad Administration (FRA) has completed its investigation.

Your letter alleged that on December 4, 2003, officers of the UP required employee [redacted] to violate the HSL by holding him on duty well in excess of his HSL expiration time in order to interrogate him about facts surrounding an injury that he claimed he sustained during his shift. [redacted] was contacted about the circumstances surrounding these allegations. He said he was offered prompt medical attention but following this, the local railroad managers "asked" him to recreate the circumstances surrounding the injury. A request coming from several railroad managers can appear to be mandatory and it came 4 1/2 hours after the expiration of the maximum hours permitted by law. [redacted] was finally allowed to report off duty at 6:15 p.m., 16 hours 35 minutes after reporting on duty.

The investigation revealed a violation was committed. The findings of this investigation will be forwarded to the Office of Chief Counsel with a recommendation for civil penalties for failure of the railroad to comply with requirements of the Federal HSL.

I understand you have been contacted and advised of our findings and handling in this matter. Thank you for your interest in railroad safety and if you have any future concerns, please contact us.

① DIRECTOR'S NOTE: PLEASE BE INFORMED THIS CASE OF MEDICAL CARE DELAY AND INTERFERENCE IS NOT WITHIN 3/15/05 SENATE TESTIMONY.

Sincerely,

D. J. Tisor
Regional Administrator

② RELEVANCE IS THAT F.R.A DID NOT FIND OR ADDRESS ISSUE OF DELAY AND INTERFERENCE. F.R.A ONLY ADDRESSED H.S.L ISSUE. → No FEDERAL JURISDICTION TO ADDRESS TREATMENT.

[Code of Federal Regulations]
[Title 49, Volume 4]
[Revised as of October 1, 2003]
>From the U.S. Government Printing Office via GPO Access
[CITE: 49CFR225.1]

[Page 267]

TITLE 49--TRANSPORTATION

CHAPTER II--FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION

PART 225--RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS--Table of
Sec. 225.1 Purpose.

The purpose of this part is to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its regulatory responsibilities under 49 U.S.C. chapters 201-213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents. Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses which occur in that State.

[61 FR 30967, June 18, 1996]

*corner*STONE

March 22, 2005

1000 East 80th Street
Bloomington, MN 55420

Business 952.884.0376

Fax 952.884.2135

www.cornerstonemn.org

Dear Judiciary Committee Members:

My name is Deirdre Keys. I work for Cornerstone Advocacy Services, Inc., as a Legal Advocate in the Criminal Justice Intervention Program. I provide victim support where there has been a domestic assault in southern Hennepin County. In addition to direct service, I am involved in systems advocacy as a voting member of the Hennepin County Family Violence Coordinating Council as well as serving as Chair of the Advocate Sub-Committee of the Council. My daily work finds me primarily in the criminal court system.

I have been asked to provide testimony of my experience with regard to Criminal Court No Contact Orders; and more specifically whether judges in my county are issuing No Contact Orders in conjunction to cases such as OFF Violations and Harassment / Stalking Cases.

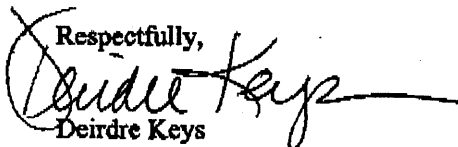
I do believe that there are some varied responses from the bench in ordering No Contact Orders. I have experienced judges choosing not to order a No Contact Order in connection with these types of cases. It may be helpful to clarify the language in 518B.01 Subd. 22. Any clarification of law will be helpful to all victims no matter the county in which they reside. I would like to propose, though, that the language be inclusive of the definition of a "Qualified domestic violence-related offense" as stated in Statute 609.02 Subd. 16.

In addition to whether or not judges are ordering No Contact Orders, there is the issue of enforcement of these orders. I have had cases in criminal court where the presiding judge of an Arraignment orders the defendant to have no contact with the victim, but it was a verbal order only. Many judges will hand-write the Conditions of Release including No Contact, but there are some judges who do not. Law enforcement requires proof of a No Contact Order before they will even consider helping the caller who is experiencing a violation of that order. Adding to the Statute a provision that judges SHALL put in writing the Conditions of Release where there is a No Contact Order could help law enforcement to enforce orders of No Contact.

If the judge signs the order in an Arraignment, and the defendant has been served, a copy of this order will be filed with the court and be given to the victim; prosecutors will be better equipped to charge this offense. It is my understanding, however, that violations of No Contact Orders are NOT enhanceable offenses. An example of an enhanceable offense would be that upon conviction of an OFF Violation as a Misdemeanor the next one may be charged as a Gross Misdemeanor. Adding a conviction of Violation of a No Contact Order to the list of enhanceable offenses would give prosecutors the choice to charge subsequent violations of No Contact Orders as Gross Misdemeanors.

My experience of defendants' responses to these orders is that they just do not matter and nothing will happen to them if they violate the order. For the most part, at this point in time, they are correct. I believe the intent of 518B.01 Subd. 22 is to provide for victim protection. If we want to fully realize the intention of this law, we should tie it to qualified domestic violence-related offenses, require judges to write and serve Conditions of Release with No Contact, and fine-tune the enhanceability of this order.

Respectfully,


Deirdre Keys*Rebuilding lives, restoring hope*

Andrea Sternberg - Amending the language to 518B.01, Subd. 22

From: "Richards, Timothy A" <Timothy.Richards@ci.minneapolis.mn.us>
To: <andrea.sternberg@senate.mn>
Date: 3/21/2005 9:59:08 AM
Subject: Amending the language to 518B.01, Subd. 22

The Minneapolis City Attorney's Office was asked to submit a written statement to be read or distributed to the committee on this issue. Attached please find that statement. If you have trouble accessing it, please contact me at (612) 673-2883. Thanks.

The Minneapolis City Attorney's Office charges and prosecutes more than 4,000 domestic abuse-related offenses each year. A large percentage of these cases includes violations of court orders for protection, violations of domestic abuse no contact orders, and harassment. Successfully prosecuting and supervising domestic abusers can be extremely difficult for a number of reasons. An ongoing obstacle we face is protecting our victims and witnesses from intimidation or further violence. Important tools for overcoming this hurdle include the court's ability to issue no contact orders and our ability to prosecute those abusers who choose to violate these orders.

The language of Minn. Stat. § 518B.01, Subd. 22, is of concern to our office, because it currently allows us to prosecute violations of no contact orders only when the underlying offense is one defined by statute as "domestic abuse." If the court's no contact order is issued in connection with a charge of violation of an order for protection, harassment, or even violation of a domestic abuse no contact order, we cannot prosecute an offender for violating that no contact order. Currently, our only remedy in those cases is to attempt to revoke the conditions of release or probation attached to the underlying offense. Revocations serve as an inadequate form of protection for victims and witnesses, because they preclude judges from holding defendants in custody beyond the times that their cases are resolved or their stayed sentences are exhausted.

Expanding the language in Minn. Stat. § 518B.01, Subd. 22 to include violations of orders for protection, harassment offenses, and violations of no contact orders issued pursuant to this subdivision would dramatically enhance the effectiveness of a judge's no contact order. We respectfully request that this committee consider such an amendment to this subdivision.



Safe Haven Shelter for Battered Women

P.O. Box 3558, Duluth, MN 55803 • Phone: (218)728-6481 - Fax: (218)728-5084
email: sh@safehavenshelter.org - website: www.safehavenshelter.org

Lonna Stevens
MCBW

Shelter for
Women and
Children

Dear Lonna,

Legal
Advocacy

In Southern St. Louis County there are 7 judges and one judicial officer. They all hear criminal domestic assault related cases and rotate arraignment court weekly. They do not routinely order a No Contact Order from the bench in criminal cases. It varies from judge to judge and it seems to depend on the charge and also on whether or not there is a current Order for Protection. If there is a current OFP, I think they believe that is sufficient. The statute currently, however, has stronger enforcement of No Contact Orders.

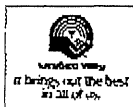
Support
Groups

Community
Education

Volunteer
Program

Cathryn Curley
Legal Advocacy Supervisor
218-730-2460

Cathryn Curley 3/22/05



INFORMATION SHEET FOR
PROPOSED CHANGE TO Minn. Stat. 518B.01, SUBD. 22

- This proposed change to Minn.Stat. § 518B.01, subd. 22 is meant to close an inadvertent loophole that currently exists.
- Because the domestic abuse no contact order is tied to the definition of "domestic abuse" in subd. 2(a) of this same statute, it can be issued only when the prosecution is for one of those crimes enumerated in that definition (assault, criminal sexual conduct, terroristic threats, interference with an emergency call). The proposed amendment expands the applicability of this no contact order (and also prosecutions for violations of this order) to include three additional offenses which frequently arise in domestic situations: Violation of an Order for Protection, Harrassment/ stalking, and Violation of a Domestic Abuse No Contact Order. When these crimes are committed against a family or household member, the court would be able to impose a Domestic abuse no contact order.

"Domestic abuse" means the following, if committed against a family or household member:

- (1) physical harm, bodily injury, or assault;
- (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or
- (3) terroristic threats, within the meaning of section 609.713, subdivision 1; ciminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

- Currently, No Contact Orders are issued in 99% of domestic violence cases in Ramsey County. Their purpose is simple. To keep victims of domestic violence safe while their case is being prosecuted. Often abusers will blame victims for their arrest and subsequent issuance of charges. A pending criminal case increases the stress in an already difficult situation. These orders prohibit a party charged with committing a crime of domestic violence from having contact with the victim of that crime until a resolution of the case or until a judge lifts the order, whichever comes first.

Before the Domestic abuse no contact order statute was enacted, persons who violated criminal court no contact orders could only be charged with the general crime of Contempt of Court. Contempt of Court can apply to a variety of circumstances far less serious than domestic abuse. The new crime of Violation of a domestic abuse no contact order readily identifies the offense as domestic-abuse related and increases the likelihood that these court order violations will be treated with the seriousness they deserve. This offense (but not Contempt of Court) also counts as a qualified misdemeanor for purposes of subsequent felony sentences under the Minnesota Sentencing Guidelines.

- In 2004, St. Paul prosecuted approximately 400 Violation of Order for Protection cases and Violation of domestic abuse no contact order case, and approximately 30 Harassment/Stalking cases. In each of these cases, violations of the No Contact Orders resulted in Contempt of Court charges instead of Violation of DA NCO charges. As a result, these 500 victims were exposed to a greater risk of harm without the added protection of the statute.

CONSEQUENCES FOR VIOLATION OF

Standard No Contact Order

1. Resulting charge is Contempt of Court
Minn. Stat. §588.20
2. Arrest is not mandated by statute.
3. Once arrested, suspect can immediately post bail of \$300
(The lowest bail in Ramsey County).
4. Conviction is NOT a qualified misdemeanor that would impact a felony sentencing.
5. Conviction is for a general crime that can apply to a variety of circumstances.

Domestic Abuse No Contact Order

1. Resulting charge is Violation of a Domestic Abuse No Contact Order
Minn. Stat. §518B.01 subd. 22
2. Mandated arrest
3. Once arrested, suspect must remain in custody until either charged with a crime or the 36 or 48 hour rule expires, whichever comes first.
4. Conviction counts as a qualified misdemeanor for purposes of subsequent felony sentencings under Minnesota Sentencing Guidelines.
5. Conviction is identified as domestic-related which increases the likelihood that these violations will be treated with the seriousness they deserve.

Evidence that the definition of "domestic abuse" does NOT include the offenses of Violation or and Order for Protection, Harassment/Stalking, or Violation of a DA NCO can be found in Minn. Stat. § 634.20. In 1998, the language was amended to include Violation of an Order for Protection and Harassment because neither were included in the definition of domestic abuse.

634.20. Evidence of conduct

Evidence of similar conduct by the accused against the victim of domestic abuse, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. "Similar conduct" includes, but is not limited to, evidence of domestic abuse, violation of an order for protection under section 518B.01; violation of a harassment restraining order under section 609.748; or violation of section 609.749 or 609.79, subdivision 1. "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subdivision 2.

Laws 1985, c. 159, § 3, eff. Aug. 1, 1985. Amended by Laws 1998, c. 367, art. 5, § 10; Laws 2000, c. 427, § 19, eff. Aug. 1, 2000; Laws 2002, c. 314, § 9.

Air Tamarack Inc.

Full Service Mold Forensic Solutions

Paul Ellringer P.E., CIH
Registered Professional Engineer
Certified Industrial Hygienist
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MN Residential Energy Code Committee Member

HF 1375 is a can of worms for the homeowner

- It will raise many issues that will allow the builders to not honor the 10 year warranty on a new house
- More homeowners will be responsible for repairs on their new homes through no fault of theirs
- Will the state accept more of the responsibility for the construction defects? I do not think so

HF 1375 – Most Damaging Section

- Sec. 5. [337A.05] [LIMITATION.]
- 7.14 In any action relating to a dwelling involving a
- 7.15 construction defect, a contractor is not liable for:
- 7.16 (1) loss or damage described in section 327A.03;
- 7.17 (2) damages caused by the contractor's reliance on the
- 7.18 written directive of a local or state building official;
- 7.19 (3) damages involving a construction defect known by or
- 7.20 disclosed to the claimant before the claimant's purchase of the
- 7.21 dwelling, or that could have been discovered by the claimant
- 7.22 through the exercise of reasonable diligence before the
- 7.23 claimant's purchase of the dwelling; or

HF 1375

- Sec. 5. [337A.05] [LIMITATION.]
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- 7.20 disclosed to the claimant before the claimant's purchase of the
- 7.21 dwelling, or that could have been discovered by the claimant
- 7.22 through the exercise of reasonable diligence before the
- 7.23 claimant's purchase of the dwelling; or

The Building Code is Not a Design Manual

- The contractor must use a good design for a house and good workmanship
- Building code has minimum requirements
- The building code in many cases is very vague and it is difficult to determine what the code requires
- Many houses need to be built to exceed the minimum building code in order to function properly

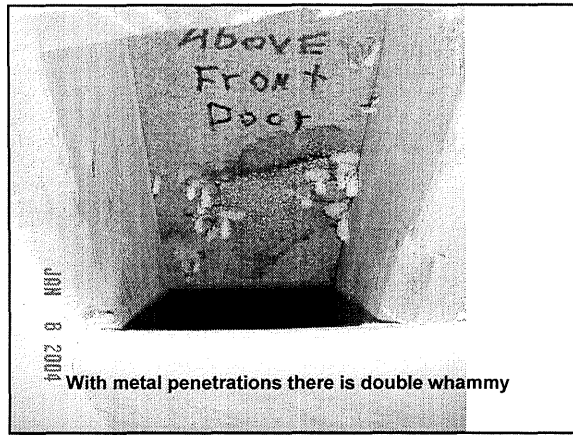
State Building Code Requires Window Flashings

- Code does not state what the exact window flashing requirements are but implies that the window manufacturers instruction should be followed
- Contractor flashes the windows using a poor procedure and the windows leak and rot out the wall
- Window manufacturer at the time the windows were installed did not have flashing instructions but did indicate the contractor needed to properly flash the windows. Today the window manufacturer has good instructions, which if followed would have worked
- Proper window flashings outlined in construction guide books would have worked if they had been used by the contractor
- Who is responsible in this case? Is it the homeowner? Is it the State? Is it the window manufacturer? Is it the contractor?



State building code requires that fasteners be used to attached sheathing and siding to a house

- If the fasteners caused the construction defect, does that mean that the contractor is not responsible?
- Code does not specify the length of fasteners in the wall
- Fasteners projecting into the wall cavity have caused the wall to rot out
- Is the homeowner just out with no recourses to get their house fixed?
- Will the state pay to get these houses fixed?



1st Floor west wall of Formal Dining Room just to the right of the window

Fiberboard moisture >40%
Stud 29%

25 staples and nails found per square foot

State building code requires a vapor retarder in the wall

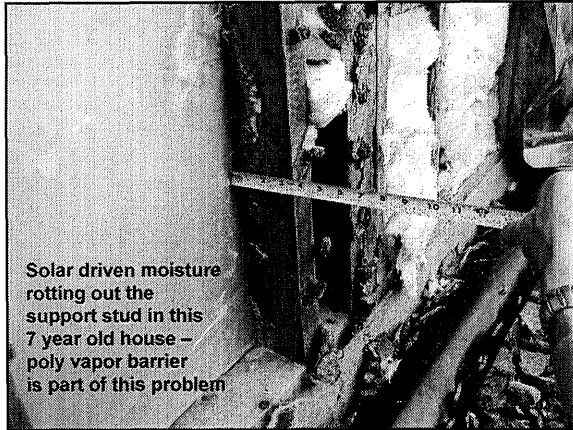
- SBC requires a vapor retarder with a perm rating of 1 or less
- What if the builder uses a very tight vapor barrier with a perm rating of 0.06 (6 mil poly), which contributed to the wall failure? This vapor retarder does meet the minimum building code
- A vapor retarder with a perm rating of 1 would have worked better and the wall may not have failed
- Who is responsible in this case? The homeowner, the state.

Exterior Conditions	Conditions within Cavity:	Interior Conditions
Temperature: 80°F	Temperature: 120°F	Temperature: 75°F
Relative humidity: 75%	Relative humidity: 100%	Relative humidity: 60%
Vapor pressure: 2.49 kPa	Vapor pressure: 11.74 kPa	Vapor pressure: 1.82 kPa

Vapor is driven both inward and outward by a high vapor pressure differential between the brick and the interior and the brick and the exterior.

Picture provided by the Building Science Corporation

- Do not install a vapor barrier on the inside of an air conditioned assembly. Vinyl wall coverings, foil-backed batt cavity insulation and polyethylene vapor barriers should be avoided.
- Vapor permeable exterior sheathings, housewraps or building papers should not be used with absorptive claddings such as brick veneers unless a ventilated cavity is provided in conjunction with high inward drying potentials (i.e. no polyethylene vapor barriers).
- Failure will occur when brick is installed over a frame wall constructed with felt paper, fiberboard sheathing and a polyethylene vapor barrier. Kraft-faced fiberglass batts should be used in place of unfaced batts and a polyethylene vapor barrier. OSB, plywood or foam sheathing should be used in place of the fiberboard sheathing.
- Similar problems occur with stucco



Solar driven moisture rotting out the support stud in this 7 year old house – poly vapor barrier is part of this problem

HF 1375

- Sec. 5. [337A.05] [LIMITATION.]
- 7.14 In any action relating to a dwelling involving a
- 7.15 construction defect, a contractor is not liable for:
- 7.16 (1) loss or damage described in section 327A.03;
- 7.17 (2) damages caused by the contractor's reliance on the
- 7.18 written directive of a local or state building official;
- 7.19 (3) damages involving a construction defect known by or
- 7.20 disclosed to the claimant before the claimant's purchase of the
- 7.21 dwelling, or that could have been discovered by the claimant
- 7.22 through the exercise of reasonable diligence before the
- 7.23 claimant's purchase of the dwelling; or

Stucco houses built after 1990 have a high moisture failure rate

- In Woodbury, 1/3 have been rebuilt because of structural defects
- Most homeowner's buying these stucco houses do not have them inspected by stucco experts
- If, after buying one, a structural defect is found, does that mean the contractor is not liable and the homeowner is out?

HF 1375 is a can of worms for the homeowner

- It will raise many issues that will allow the builders to not honor the 10 year warranty on a new house
- More homeowners will be responsible for repairs on their new homes through no fault of theirs
- Will the state accept more of the responsibility for the construction defects? I do not think so.

Ellringer's Wisdom to Contractors

- The building code *is not a design manual*. Building to the minimum building code does not assure a good building
- The *building design expertise* of building code officials varies greatly and can not be relied upon.
- Work with a design professional to come up with a good design that meets the code requirements
- If this design conflicts with the building code or the local code official's understanding of the code, then go back to the design professional to change the design to meet the code and also be a good design

Wisdom to General Contractors from Doctor Joe Lstiburek PhD, PE

- All the general contractor has to do is build the building on time and on budget using imperfect materials and imperfect trades, under less than ideal conditions. The client even expects the building to work. There never seems to be enough time or money, but the job still has to get done. In this line of work, Murphy is an optimist.
- In the old days, all you needed was good workmanship and good materials. Getting good workmanship today is hard enough given the state of the trades, but it is not enough. Good workmanship cannot compensate for bad design.

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
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JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1010 - Prohibiting Prejudgment Garnishment in Certain Circumstances

Author: Senator Ann H. Rest

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 3, 2005

S.F. No. 1010 changes garnishment procedures to prevent garnishment of funds before a judgment has been obtained, in ordinary creditor-debtor matters. Sections 1 to 4 amend the attorney's summary execution law, chapter 551. Sections 5 to 12 amend the garnishment law, chapter 571.

Attorney's Summary Execution Law

Section 1 amends section 551.05 so that a debtor no longer must, to make a financial institution hold garnished money, inform the institution that he is asserting in court an exemption to the creditor's claim.

Section 2 requires that, if a creditor objects to an exemption claim, the creditor must arrange for a court hearing on the issue. The section provides for the timing of the hearing and any order.

Section 3 provides a form for notice to the debtor of the hearing. The form includes blanks for various pieces of information.

Section 4 requires the financial institution to hold the money until released by the parties or a court determination of the exemption claim.

Garnishment Law

Section 5 removes the creditor's authority to garnish before judgment except in the circumstances listed in section 571.93.

Section 6 removes a requirement that a garnishment summons be accompanied with the summons and complaint in the original action.

Section 7 removes a provision for the holding time for prejudgment garnishments.

Section 8 removes from a form, a warning about prejudgment garnishments

Section 9 requires the creditor to arrange for a hearing on a debtor's claim for exemption.

Section 10 provides a form for the creditor's notice of hearing.

Section 11 requires the financial institution to hold the money until released by the parties or a court determination of the exemption claim.

Section 12 removes the authority of the court to issue a garnishment summons before default in the cases that permit garnishment before judgment.

Section 13 repeals forms that relate to prejudgment garnishment.

HW:cs

A handwritten signature in black ink, appearing to be the initials 'HW' with a stylized flourish.

1 Senator moves to amend S.F. No. 1010 as follows:
2 Pages 8 to 11, delete sections 5 to 7
3 Pages 19 and 20, delete section 12
4 Renumber the sections in sequence and correct the internal
5 references
6 Amend the title as follows:
7 Page 1, lines 2 and 3, delete "prohibiting prejudgment
8 garnishment in certain circumstances" and insert "requiring
9 creditors to arrange for hearings on exemption claims"
10 Page 1, line 6, delete "571.71; 571.72, subdivision 4;
11 571.79;"
12 Page 1, line 7, delete "571.93, subdivision 1;"

Senator Rest introduced--**S.F. No. 1010:** Referred to the Committee on Judiciary.

1

A bill for an act

2 relating to creditors remedies; prohibiting
3 prejudgment garnishment in certain circumstances;
4 amending Minnesota Statutes 2004, sections 551.05,
5 subdivisions 1a, 3, 4, by adding a subdivision;
6 571.71; 571.72, subdivision 4; 571.79; 571.912;
7 571.914, subdivisions 1, 2, 4; 571.93, subdivision 1;
8 repealing Minnesota Statutes 2004, sections 551.05,
9 subdivisions 5, 6; 571.914, subdivision 3.

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

11 Section 1. Minnesota Statutes 2004, section 551.05,
12 subdivision 1a, is amended to read:

13 Subd. 1a. [EXEMPTION NOTICE.] If the writ of execution is
14 being used by the attorney to levy funds of a judgment debtor
15 who is a natural person and if the funds to be levied are held
16 on deposit at any financial institution, the attorney for the
17 judgment creditor shall serve with the writ of execution two
18 copies of an exemption notice. The notice must be substantially
19 in the form set forth below. Failure of the attorney for the
20 judgment creditor to send the exemption notice renders the
21 execution levy void, and the financial institution shall take no
22 action. However, if this subdivision is being used to execute
23 on funds that have previously been garnished in compliance with
24 section 571.71, the attorney for judgment creditor is not
25 required to serve an additional exemption notice. In that
26 event, the execution levy shall only be effective as to the
27 funds that were subject to the prior garnishment. Upon receipt

1 of the writ of execution and exemption notices, the financial
2 institution shall retain as much of the amount due under section
3 550.04 as the financial institution has on deposit owing to the
4 judgment debtor, but not more than 100 percent of the amount
5 remaining due on the judgment, or \$10,000, whichever is less.

6 The notice informing a judgment debtor that an execution
7 levy has been used to attach funds of the judgment debtor to
8 satisfy a claim must be substantially in the following form:

9
10 STATE OF MINNESOTA DISTRICT COURT
11 County of JUDICIAL DISTRICT
12(Judgment Creditor)
13(Judgment Debtor)

14 TO: Judgment Debtor EXEMPTION NOTICE

15 An order for attachment, garnishment summons, or levy of
16 execution (strike inapplicable language) has been served on
17 (bank or other financial institution where you
18 have an account).

19 Your account balance is \$.....

20 The amount being held is \$.....

21 However, all or a portion of the funds in your account will
22 normally be exempt from creditors' claims if they are in one of
23 the following categories:

24 (1) relief based on need. This includes the Minnesota
25 Family Investment Program (MFIP), Work First Program, Medical
26 Assistance (MA), General Assistance (GA), General Assistance
27 Medical Care (GAMC), Emergency General Assistance (EGA),
28 Minnesota Supplemental Aid (MSA), MSA Emergency Assistance
29 (MSA-EA), Supplemental Security Income (SSI), and Energy
30 Assistance;

31 (2) Social Security benefits (Old Age, Survivors, or
32 Disability Insurance);

33 (3) unemployment benefits, workers' compensation, or
34 veterans' benefits;

35 (4) an accident, disability, or retirement pension or
36 annuity;

1 (5) life insurance proceeds;

2 (6) the earnings of your minor child and any child support
3 paid to you; or

4 (7) money from a claim for damage or destruction of exempt
5 property (such as household goods, farm tools, business
6 equipment, a mobile home, or a car).

7 The following funds are also exempt:

8 (8) all earnings of a person in category (1);

9 (9) all earnings of a person who has received relief based
10 on need, or who has been an inmate of a correctional
11 institution, within the last six months;

12 (10) 75 percent of every judgment debtor's after tax
13 earnings; or

14 (11) all of a judgment debtor's after tax earnings below 40
15 times the federal minimum wage.

16 TIME LIMIT ON EXEMPTIONS AFTER DEPOSIT IN BANK:

17 Categories (10) and (11): 20 days

18 Categories (8) and (9): 60 days

19 All others: no time limit, as long as funds are traceable
20 to the exempt source. (In tracing funds, the first-in,
21 first-out method is used. This means money deposited first is
22 spent first.) The money being sought by the judgment creditor
23 is being held in your account to give you a chance to claim an
24 exemption.

25 TO CLAIM AN EXEMPTION:

26 Fill out, sign, and mail or deliver one copy of the
27 attached exemption claim form to the institution which sent you
28 this notice and mail or deliver one copy to the judgment
29 creditor's attorney. The address for the judgment creditor's
30 attorney is set forth below. Both copies must be mailed or
31 delivered on the same day.

32 NOTE: You may help resolve your claim faster if you send
33 to the creditor's attorney written proof or documents that
34 show why your money is exempt. If you have questions
35 regarding the documents to send as proof of an exemption,
36 call the creditor's attorney. If you do not send written

1 proof and the creditor's attorney has questions about your
2 exemption claim, the creditor's attorney may object to your
3 claim which may result in a further delay in releasing your
4 exempt funds.

5 If they do not get the exemption claim back from you within
6 14 days of the date they mailed or gave it to you, they will be
7 free to turn the money over to the attorney for the judgment
8 creditor. If you are going to claim an exemption, do so as soon
9 as possible, because your money may be held until it is decided.

10 IF YOU CLAIM AN EXEMPTION:

11 (1) nonexempt money can be turned over to the judgment
12 creditor or sheriff;

13 (2) the financial institution will keep holding the money
14 claimed to be exempt; and

15 (3) seven days after receiving your exemption claim, the
16 financial institution will release the money to you unless
17 before then it receives an objection to your exemption claim.

18 IF THE JUDGMENT CREDITOR OBJECTS TO YOUR EXEMPTION CLAIM:

19 The institution will hold the money until a court decides
20 if your exemption claim is valid, ~~BUT ONLY IF THE INSTITUTION~~
21 ~~GETS A COPY OF YOUR COURT MOTION PAPERS ASSERTING THE EXEMPTION~~
22 ~~WITHIN TEN DAYS AFTER THE OBJECTION IS PERSONALLY SERVED ON YOU,~~
23 ~~OR WITHIN 13 DAYS FROM THE DATE THE OBJECTION IS MAILED TO YOU.~~

24 You may wish to consult an attorney at once if the judgment
25 creditor objects to your exemption claim.

26 MOTION TO DETERMINE EXEMPTION:

27 At any time after your funds have been held, you may ask
28 for a court decision on the validity of your exemption claim by
29 filing a request for hearing which may be obtained at the office
30 of the court administrator of the above court.

31 PENALTIES:

32 If you claim an exemption in bad faith, or if the judgment
33 creditor wrongly objects to an exemption in bad faith, the court
34 may order the person who acted in bad faith to pay costs, actual
35 damages, attorney fees, and an additional amount of up to \$100.

36

1
 2
 3

4 Name and address of (Attorney
 5 for) Judgment Creditor

6 EXEMPTION:

7 (a) Amount of exemption claim.

8 / / I claim ALL the funds being held are exempt.

9 / / I claim SOME of the funds being held are exempt.

10 The exempt amount is \$.....

11 (b) Basis for exemption.

12 Of the 11 categories listed above, I am in category number
 13 (If more than one category applies, you may fill
 14 in as many as apply.) The source of the exempt funds is the
 15 following:

16
 17
 18

19 (If the source is a type of relief based on need, list the
 20 case number and county:

21 case number:

22 county:)

23 I hereby authorize any agency that has distributed relief
 24 to me or any correctional institution in which I was an inmate
 25 to disclose to the above named judgment creditor's attorney only
 26 whether or not I am or have been a recipient of relief based on
 27 need or an inmate of a correctional institute within the last
 28 six months.

29 I have mailed or delivered a copy of the exemption notice
 30 to the judgment creditor's attorney at the address indicated
 31 above.

32
 33 DEBTOR

34 DATED:
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DEBTOR ADDRESS
.....
DEBTOR TELEPHONE NUMBER

Sec. 2. Minnesota Statutes 2004, section 551.05, subdivision 3, is amended to read:

Subd. 3. [OBJECTION TO EXEMPTION CLAIM.] ~~Objection shall be interposed by mailing or delivering one copy of the written objection to the financial institution and one copy of the written objection to the judgment debtor along with a copy of the judgment debtor's claimed exemption form. Both copies of an objection to an exemption claim shall be mailed or delivered on the same date. The financial institution may rely on the date of mailing or delivery of a notice to it in computing any time periods in this section. The written objection must be substantially in the form specified in subdivision 5.~~ If a judgment creditor objects to a judgment debtor's exemption claim, the judgment creditor shall obtain from the court administrator or a designated motion calendar deputy a date and time for an evidentiary hearing on its objection. The judgment creditor shall serve on the judgment debtor and financial institution, personally or by first class mail, a notice of hearing on creditor's objection to debtor's exemption claim in the form specified in subdivision 3a, on the same day that it obtains the hearing date. The hearing date obtained by the judgment creditor must be no earlier than five business days and no later than ten business days from the date the judgment creditor requests and obtains the hearing date. An order stating whether the judgment debtor's funds are exempt must be issued by the court within three days of the date of the hearing.

Sec. 3. Minnesota Statutes 2004, section 551.05, is amended by adding a subdivision to read:

Subd. 3a. [NOTICE OF HEARING ON JUDGMENT CREDITOR'S OBJECTION TO JUDGMENT DEBTOR'S EXEMPTION CLAIM.] The judgment creditor's notice of hearing on its objection to the judgment debtor's exemption claim must be in substantially the following form:

1 STATE OF MINNESOTA DISTRICT COURT
2 County ofJUDICIAL DISTRICT
3(Judgment Creditor) NOTICE OF
4(Judgment Debtor) HEARING ON
5(Garnishee) (Third Party) JUDGMENT CREDITOR'S
6 OBJECTION TO
7 JUDGMENT DEBTOR'S
8 EXEMPTION CLAIM

9 The judgment creditor objects to your claim for exemption
10 from garnishment, levy of execution, order for attachment
11 (strike inapplicable language) for the following reason(s):

12
13
14

15 A hearing will be held in this case on (Date) at (Time) at
16 (Place) to resolve whether your funds at (Financial Institution)
17 are exempt. You have claimed that such funds are exempt because
18
19
20
21

22 At the hearing, you will have to prove that your funds are
23 exempt. If you do not attend the hearing, the judge may order
24 that your funds be released to the judgment creditor. The judge
25 will issue an order within three days of the hearing regarding
26 whether your funds are exempt.

27 Because the judgment creditor objected to your exemption
28 claim, your financial institution will retain the funds you
29 claim to be exempt until it receives: (1) a written release
30 from either the judgment creditor or you; or (2) an order from
31 the court regarding whether your funds are exempt.

32 Dated:
33
34 Judgment Creditor or Creditor's Attorney
35
36Address

1 (Note to both parties: Bring with you to the hearing all
 2 documents and materials relevant to the exemption claim and
 3 objection. Failure to do so could delay the court's decision.)

4 Sec. 4. Minnesota Statutes 2004, section 551.05,
 5 subdivision 4, is amended to read:

6 Subd. 4. [DUTIES OF FINANCIAL INSTITUTION IF OBJECTION IS
 7 MADE TO EXEMPTION CLAIM.] Upon receipt of a written objection
 8 from the judgment creditor within the specified seven-day
 9 period, the financial institution shall retain the funds claimed
 10 to be exempt. ~~Unless the financial institution receives a~~
 11 ~~request for hearing and notice of hearing from the judgment~~
 12 ~~debtor asserting exemption rights within ten days after receipt~~
 13 ~~of a written objection to the exemption,~~ The funds remain
 14 subject to the execution levy as if no claim of exemption had
 15 been made ~~and shall be remitted to the judgment creditor's~~
 16 ~~attorney within seven days. If a request for hearing and notice~~
 17 ~~of hearing to determine the validity of a claim of exemption is~~
 18 ~~received by the financial institution within the period~~
 19 ~~provided, it shall retain the funds claimed to be exempt until~~
 20 ~~otherwise ordered by the court.~~ The financial institution shall
 21 retain the funds claimed to be exempt until it receives: (1) a
 22 written release from either the judgment creditor or judgment
 23 debtor; or (2) an order stating whether the funds are exempt.

24 Sec. 5. Minnesota Statutes 2004, section 571.71, is
 25 amended to read:

26 571.71 [GARNISHMENT; WHEN AUTHORIZED.]

27 As an ancillary proceeding to a civil action for the
 28 recovery of money, a creditor may issue a garnishment summons as
 29 provided in this chapter against any third party in the
 30 following instances:

31 (1) at the time the civil action is commenced or at any
 32 time after the commencement of the civil action, but before the
 33 entry of a judgment, if the court orders the issuance of the
 34 garnishment summons pursuant to section 571.93; or

35 (2) ~~at any time 40 days or more after service of the~~
 36 ~~summons and complaint upon the debtor in the civil action when a~~

1 judgment-by-default-could-have,-but-has-not,-been-entered
 2 pursuant-to-Rule-55.01(a)-of-the-Minnesota-Rules-of-Civil
 3 Procedure-for-the-District-Courts:--No-filing-of-a-pleading-or
 4 other-documents-by-the-creditor-is-required-to-issue-a
 5 garnishment-summons-under-this-clause,-however,-the-creditor
 6 must-comply-with-the-service-requirement-of-section-571.72,
 7 subdivision-4,-or

8 {3} at any time after entry of a money judgment in the
 9 civil action.

10 Sec. 6. Minnesota Statutes 2004, section 571.72,
 11 subdivision 4, is amended to read:

12 Subd. 4. [SERVICE OF GARNISHMENT SUMMONS ON DEBTOR.] A
 13 copy of the garnishment summons and copies of all other papers
 14 served on the garnishee must be served by mail at the last known
 15 mailing address of the debtor not later than five days after the
 16 service is made upon the garnishee. ~~The-first-time-a~~
 17 ~~garnishment-summons-is-served-on-the-debtor-pursuant-to-section~~
 18 ~~571.71,-clause-(2),-the-creditor-shall-also-serve-a-copy-of-the~~
 19 ~~affidavit-of-service-of-the-original-summons-and-complaint.~~
 20 Service of the garnishment documents on the debtor is effective
 21 upon mailing.

22 Sec. 7. Minnesota Statutes 2004, section 571.79, is
 23 amended to read:

24 571.79 [DISCHARGE OF A GARNISHEE.]

25 Except as provided in paragraph (h) (g), the garnishee,
 26 after disclosure, shall be discharged of any further retention
 27 obligation to the creditor with respect to a specific
 28 garnishment summons when one of the following conditions are met:

29 (a) The garnishee discloses that the garnishee is not
 30 indebted to the debtor or does not possess any money or other
 31 property belonging to the debtor that is attachable as defined
 32 in section 571.73, subdivision 3. The disclosure is conclusive
 33 against the creditor and discharges the garnishee from any
 34 further obligation to the creditor other than to retain all
 35 nonexempt disposable earnings, indebtedness, money, and property
 36 of the debtor which was disclosed.

1 (b) The garnishee discloses that the garnishee is indebted
2 to the debtor as indicated on the garnishment disclosure form.
3 The disclosure is conclusive against the creditor and discharges
4 the garnishee from any further obligation to the creditor other
5 than to retain all nonexempt disposable earnings, indebtedness,
6 money, and property of the debtor that was disclosed.

7 ~~(c) If the garnishee was served with a garnishment summons~~
8 ~~before entry of judgment against the debtor by the creditor in~~
9 ~~the civil action and the garnishee has retained any disposable~~
10 ~~earnings, indebtedness, money, or property of the debtor, 270~~
11 ~~days after the garnishment summons is served the garnishee is~~
12 ~~discharged and the garnishee shall return any disposable~~
13 ~~earnings, indebtedness, money, and property to the debtor.~~

14 (d) (c) If the garnishee was served with a garnishment
15 summons after entry of judgment against the debtor by the
16 creditor in the civil action and the garnishee has retained any
17 disposable earnings, indebtedness, money, or property of the
18 debtor, 180 days after the garnishment summons is served the
19 garnishee is discharged and the garnishee shall return any
20 disposable earnings, other indebtedness, money, and property to
21 the debtor.

22 (e) (d) If the garnished indebtedness, money, or other
23 property is destroyed without any negligence of the garnishee,
24 the garnishee is discharged of any liability to the creditor for
25 nondelivery of the garnished indebtedness, money, and other
26 property.

27 (f) (e) The court may, upon motion of an interested person,
28 discharge the garnishee as to any disposable earnings, other
29 indebtedness, money, and property in excess of the amount that
30 may be required to satisfy the creditor's claim.

31 (g) (f) The discharge of the garnishee pursuant to
32 paragraph (a), (b), (e), or (d) (c) is not determinative of the
33 rights of the creditor, debtor, or garnishee with respect to any
34 other garnishment summons, even another garnishment summons
35 involving the same parties, unless and to the extent adjudicated
36 pursuant to the procedures described in paragraph (h) (g).

1 (h) (g) The garnishee is not discharged if within 20 days
 2 of the service of the garnishee's disclosure or the return to
 3 the debtor of any disposable earnings, indebtedness money, or
 4 other property of the debtor, whichever is later, an interested
 5 person (1) serves a motion scheduled to be heard within 30 days
 6 of the service of the motion relating to the garnishment, or (2)
 7 serves a motion scheduled to be heard within 30 days of the
 8 service of the motion for leave to file a supplemental complaint
 9 against the garnishee, as provided under section 571.75,
 10 subdivision 4, and the court upon proper showing vacates the
 11 discharge of the garnishee.

12 Sec. 8. Minnesota Statutes 2004, section 571.912, is
 13 amended to read:

14 571.912 [FORM OF EXEMPTION NOTICE.]

15 The notice informing a debtor that an order for attachment,
 16 garnishment summons, or levy by execution has been used to
 17 attach funds of the debtor to satisfy a claim must be
 18 substantially in the following form:

19 STATE OF MINNESOTA DISTRICT COURT
 20 COUNTY OFJUDICIAL DISTRICT
 21 (Creditor)
 22 (Debtor)

23 TO: Debtor EXEMPTION NOTICE

24 An order for attachment, garnishment summons, or levy of
 25 execution (strike inapplicable language) has been served on
 26 (bank or other financial institution)
 27 where you have an account.

28 Your account balance is \$.....
 29 The amount being held is \$.....

30 However, all or a portion of the funds in your account will
 31 normally be exempt from creditors' claims if they are in one of
 32 the following categories:

- 33 (1) relief based on need. This includes the Minnesota
 34 Family Investment Program (MFIP), Emergency Assistance (EA),
 35 Work First Program, Medical Assistance (MA), General Assistance
 36 (GA), General Assistance Medical Care (GAMC), Emergency General

1 Assistance (EGA), Minnesota Supplemental Aid (MSA), MSA
2 Emergency Assistance (MSA-EA), Supplemental Security Income
3 (SSI), and Energy Assistance;

4 (2) Social Security benefits (Old Age, Survivors, or
5 Disability Insurance);

6 (3) unemployment benefits, workers' compensation, or
7 veterans' benefits;

8 (4) an accident, disability, or retirement pension or
9 annuity;

10 (5) life insurance proceeds;

11 (6) the earnings of your minor child and any child support
12 paid to you; or

13 (7) money from a claim for damage or destruction of exempt
14 property (such as household goods, farm tools, business
15 equipment, a mobile home, or a car).

16 The following funds are also exempt:

17 (8) all earnings of a person in category (1);

18 (9) all earnings of a person who has received relief based
19 on need, or who has been an inmate of a correctional
20 institution, within the last six months;

21 (10) 75 percent of every debtor's after tax earnings; and

22 (11) all of a debtor's after tax earnings below 40 times
23 the federal minimum wage.

24 TIME LIMIT ON EXEMPTIONS AFTER DEPOSIT IN BANK:

25 Categories (10) and (11): 20 days

26 Categories (8) and (9): 60 days

27 All others: no time limit, as long as funds are traceable
28 to the exempt source. (In tracing funds, the first-in,
29 first-out method is used. This means money deposited first is
30 spent first.) The money being sought by the creditor is being
31 held in your account to give you a chance to claim an exemption.

32 TO CLAIM AN EXEMPTION:

33 Fill out, sign, and mail or deliver one copy of the
34 attached exemption claim form to the institution which sent you
35 this notice and mail or deliver one copy to the creditor's
36 attorney. In the event that there is no attorney for the

1 creditor, then such notice shall be sent directly to the
2 creditor. The address for the creditor's attorney or the
3 creditor is set forth below. Both copies must be mailed or
4 delivered on the same day.

5 NOTE: You may help resolve your claim faster if you send
6 to the creditor's attorney written proof or documents that
7 show why your money is exempt. If you have questions
8 regarding the documents to send as proof of an exemption,
9 call the creditor's attorney. If you do not send written
10 proof and the creditor's attorney has questions about your
11 exemption claim, the creditor's attorney may object to your
12 claim which may result in a further delay in releasing your
13 exempt funds.

14 If they do not get the exemption claim back from you within
15 14 days of the date they mailed or gave it to you, they will be
16 free to turn the money over to the sheriff or the creditor. If
17 you are going to claim an exemption, do so as soon as possible,
18 because your money may be held until it is decided.

19 IF YOU CLAIM AN EXEMPTION:

20 (1) nonexempt money can be turned over to the creditor or
21 sheriff;

22 (2) the financial institution will keep holding the money
23 claimed to be exempt; and

24 (3) seven days after receiving your exemption claim, the
25 financial institution will release the money to you unless
26 before then it receives an objection to your exemption claim.

27 IF THE CREDITOR OBJECTS TO YOUR EXEMPTION CLAIM:

28 The institution will hold the money until a court decides
29 if your exemption claim is valid~~7-BUT-ONLY-IF-the-institution~~
30 ~~gets-a-copy-of-your-court-motion-papers-asserting-the-exemption~~
31 ~~WITHIN-TEN-DAYS-after-the-objection-is-personally-served-on-you7~~
32 ~~or-within-13-days-from-the-date-the-objection-is-mailed-to-you.~~

33 You may wish to consult an attorney at once if the creditor
34 objects to your exemption claim.

35 MOTION TO DETERMINE EXEMPTION:

36 At any time after your funds have been held, you may ask

1 for a court decision on the validity of your exemption claim by
2 filing a request for hearing which may be obtained at the office
3 of the court administrator of the above court.

4 PENALTIES:

5 If you claim an exemption in bad faith, or if the creditor
6 wrongly objects to an exemption in bad faith, the court may
7 order the person who acted in bad faith to pay costs, actual
8 damages, attorney fees, and an additional amount of up to \$100.

9
10
11
12

13 Name and address of (Attorney
14 for) Judgment Creditor

15 EXEMPTION:

16 (If you claim an exemption complete the following):

17 (a) Amount of exemption claim.

18 / / I claim ALL the funds being held are exempt.

19 / / I claim SOME of the funds being held are exempt.

20 The exempt amount is \$.....

21 (b) Basis for exemption.

22 Of the eleven categories listed above, I am in category
23 number (If more than one category applies, you may
24 fill in as many as apply.) The source of the exempt funds is
25 the following:

26
27
28

29 (If the source is a type of relief based on need, list the
30 case number and county:

31 case number:

32 county:

33 I hereby authorize any agency that has distributed relief
34 to me or any correctional institution in which I was an inmate
35 to disclose to the above named creditor or its attorney only
36 whether or not I am or have been a recipient of relief based on

1 need or an inmate of a correctional institute within the last
2 six months.

3 I have mailed or delivered a copy of the exemption notice
4 to the creditor's attorney at the address indicated above.

5 DATED:

6 DEBTOR

7

8 DEBTOR ADDRESS

9

10 DEBTOR TELEPHONE NUMBER

11 Sec. 9. Minnesota Statutes 2004, section 571.914,
12 subdivision 1, is amended to read:

13 Subdivision 1. [OBJECTIONS.] ~~An objection shall be~~
14 ~~interposed by mailing or delivering one copy of the written~~
15 ~~objection to the financial institution and one copy of the~~
16 ~~written objection to the debtor. A Request for Hearing and~~
17 ~~Notice of Hearing form must accompany each copy of the written~~
18 ~~objection.~~

19 ~~Both copies of an objection to an exemption claim must be~~
20 ~~mailed or delivered on the same date. The financial institution~~
21 ~~may rely on the date of mailing or delivery of a notice to it in~~
22 ~~computing any time periods in this section.~~

23 ~~The written objection, and Request for Hearing and Notice~~
24 ~~of Hearing, must be substantially in the forms set out in~~
25 ~~subdivisions 2 and 3.~~

26 ~~The court shall provide clerical assistance to help with~~
27 ~~the writing and filing of a Request for Hearing by any person~~
28 ~~not represented by counsel. The court administrator may charge~~
29 ~~a fee of \$1 for the filing of a Request for Hearing. Upon the~~
30 ~~filing of a Request for Hearing, the court administrator shall~~
31 ~~schedule the matter for hearing no later than five business days~~
32 ~~from the date of filing. The court administrator shall~~
33 ~~immediately send a completed copy of the request, including the~~
34 ~~hearing date, time, and place to the adverse party and to the~~
35 ~~financial institution by first class mail.~~

36 ~~An order stating whether the debtor's funds are exempt~~

1 shall-be-issued-by-the-court-within-three-days-of-the-date-of
2 the-hearing.

3 If a creditor objects to a debtor's exemption claim, the
4 creditor shall obtain from the court administrator or a
5 designated motion calendar deputy a date and time for an
6 evidentiary hearing on its objection. The creditor shall serve
7 on the debtor and garnishee, personally or by first class mail,
8 a notice of hearing on creditor's objection to debtor's
9 exemption claim in the form specified in subdivision 2, on the
10 same day that it obtains the hearing date. The hearing date
11 obtained by the creditor must be no earlier than five business
12 days and no later than ten business days from the date the
13 creditor requests and obtains the hearing date. An order
14 stating whether the debtor's funds are exempt must be issued by
15 the court within three days of the date of the hearing.

16 Sec. 10. Minnesota Statutes 2004, section 571.914,
17 subdivision 2, is amended to read:

18 Subd. 2. [NOTICE OF HEARING ON CREDITOR'S OBJECTION TO
19 DEBTOR'S EXEMPTION CLAIM.] ~~(a)-The-written-objection-to-the~~

20 ~~debtor-must-be-in-substantially-the-following-form:~~

21 ~~STATE-OF-MINNESOTA-----DISTRICT-COURT~~

22 ~~COUNTY-OF-----JUDICIAL-DISTRICT~~

23 ~~------(Creditor)~~

24 ~~------(Debtor)-----CREDITOR'S-OBJECTION~~

25 ~~------(Garnishee)-----TO-EXEMPTION-CLAIM~~

26 ~~The-creditor-objects-to-your-claim-for-exemption-from~~
27 ~~garnishment,-levy-of-execution,-order-for-attachment-(strike~~
28 ~~inapplicable-language)-for-the-following-reason(s):~~

29 ~~-----~~
30 ~~-----~~
31 ~~-----~~

32 ~~Because-of-this-objection,-your-financial-institution-will~~
33 ~~retain-the-funds-you-claimed-to-be-exempt-for-an-additional-ten~~
34 ~~days.--If-you-wish-to-request-a-hearing-on-your-exemption-claim,-~~
35 ~~you-need-to-do-so-within-ten-days-from-the-date-the-objection~~
36 ~~was-personally-served-on-you,-or-within-13-days-of-the-date-the~~

1 objection-was-mailed-to-you.--You-may-request-a-hearing-by
2 completing-the-attached-form-and-filing-it-with-the-court
3 administrator.

4 1.--The-court-shall-provide-clerical-assistance-to-help
5 with-the-writing-and-filing-of-a-Request-for-Hearing-by-any
6 person-not-represented-by-counsel.--The-court-administrator-may
7 charge-a-fee-of-\$1-for-the-filing-of-a-Request-for-Hearing.

8 2.--Upon-the-filing-of-a-Request-for-Hearing, the-clerk
9 shall-schedule-the-matter-for-a-hearing-no-later-than-five
10 business-days-from-the-date-of-filing.--The-court-administrator
11 shall-forthwith-send-a-completed-copy-of-the-request, including
12 the-hearing-date, time, and-place-to-the-adverse-party-and-to
13 the-financial-institution-by-first-class-mail.

14 3.--If-it-is-possible-that-the-financial-institution-might
15 not-receive-the-request-mailed-from-the-court-administrator
16 within-ten-days, then-you-may-want-to-personally-deliver-a-copy
17 of-the-request-to-the-financial-institution-after-you-have-filed
18 your-request-with-the-court.

19 4.--An-order-stating-whether-your-funds-are-exempt-shall-be
20 issued-by-the-court-within-three-days-of-the-date-of-the-hearing.

21 If-you-do-not-file-a-Request-for-Hearing-within-ten-days-of
22 the-date-the-objection-was-personally-served-on-you, or-within
23 13-days-from-the-date-the-objection-was-mailed-to-you, your
24 financial-institution-may-turn-your-funds-over-to-your-creditor.

25 If-you-file-a-Request-for-Hearing-and-your-financial
26 institution-receives-it-within-ten-days-of-the-date-it-received
27 this-objection, your-financial-institution-will-retain-your
28 funds-claimed-to-be-exempt-until-otherwise-ordered-by-the-court,
29 or-until-the-garnishment-lapses-pursuant-to-Minnesota-Statutes,
30 section-571.79.

31
32 (CREDITOR-OR-CREDITOR'S-ATTORNEY.)

33 The creditor's notice of hearing on its objection to the
34 debtor's exemption claim must be in substantially the following
35 form:

36 STATE OF MINNESOTA

DISTRICT COURT

1 COUNTY OFJUDICIAL DISTRICT
 2(Creditor) NOTICE OF HEARING ON
 3(Debtor) CREDITOR'S OBJECTION
 4(Garnishee)(Third Party) TO DEBTOR'S
 5 EXEMPTION CLAIM

6 The creditor objects to your claim for exemption from
 7 garnishment, levy of execution, order for attachment (strike
 8 inapplicable language) for the following reason(s):

9
 10
 11

12 A hearing will be held in this case on (Date) at (Time) at
 13 (Place) to resolve whether your funds at (Financial Institution)
 14 are exempt. You have claimed that such funds are exempt
 15 because.....

16
 17

18 At the hearing, you will have to prove that your funds are
 19 exempt. If you do not attend the hearing, the judge may order
 20 that your funds be released to the judgment creditor. The judge
 21 will issue an order within three days of the hearing regarding
 22 whether your funds are exempt.

23 Because the creditor objected to your exemption claim, your
 24 financial institution will retain the funds you claim to be
 25 exempt until it receives: (1) a written release from either the
 26 creditor or you; or (2) an order from the court regarding
 27 whether your funds are exempt.

28 Dated:.....

29
 30 Judgment Creditor or Creditor's Attorney
 31
 32Address

33 (Note to both parties: Bring with you to the hearing all
 34 documents and materials relevant to the exemption claim and
 35 objection. Failure to do so could delay the court's decision.)

36 Sec. 11. Minnesota Statutes 2004, section 571.914,

1 subdivision 4, is amended to read:

2 Subd. 4. [DUTIES OF FINANCIAL INSTITUTION IF OBJECTION IS
3 MADE TO EXEMPTION CLAIM.] Upon receipt of a written objection
4 from the creditor within the specified seven-day period, the
5 financial institution shall retain the funds claimed to be
6 exempt. ~~Unless the financial institution receives a request for
7 hearing from the debtor asserting exemption rights within ten
8 days after receipt of the written objection to the exemption,~~
9 The funds remain subject to the garnishment summons as if no
10 claim of exemption had been made. ~~If a notice of motion and
11 motion to determine the validity of a claim of exemption is
12 received by the financial institution within the period
13 provided, the financial institution shall retain the funds
14 claimed to be exempt until otherwise ordered by the court, or
15 until the garnishment lapses pursuant to section 571.79. The
16 financial institution shall retain the funds claimed to be
17 exempt until it receives: (1) a written release from either the
18 creditor or debtor; or (2) an order stating whether the funds
19 are exempt.~~

20 Sec. 12. Minnesota Statutes 2004, section 571.93,
21 subdivision 1, is amended to read:

22 Subdivision 1. [GROUNDS.] The court may order the issuance
23 of a garnishment summons before judgment ~~or default~~ in the civil
24 action, if a summons and complaint, or copies of these
25 documents, are filed with the appropriate court, and if, upon
26 application to the court, it appears that any of the following
27 grounds exist:

28 (1) the debtor has assigned, secreted, or disposed of, or
29 is about to assign, secrete, or dispose of, any of the debtor's
30 nonexempt property, with intent to delay or defraud any of
31 debtor's creditors;

32 (2) the debtor has removed, or is about to remove, any of
33 the debtor's nonexempt property from this state, with intent to
34 delay or defraud any of debtor's creditors;

35 (3) the debtor has converted or is about to convert any of
36 the debtor's nonexempt property into money or credits, for the

1 purpose of placing the property beyond the reach of any of
2 debtor's creditors;

3 (4) the debtor has committed an intentional fraud giving
4 rise to the claim upon which the civil action is brought;

5 (5) the debtor has committed any act or omission, for which
6 the debtor has been convicted of a felony, giving rise to the
7 claim upon which the civil action is brought; or

8 (6) the purpose of the garnishment is to establish quasi in
9 rem jurisdiction and

10 (i) debtor is a resident individual having left the state
11 with intent to defraud creditors, or to avoid service; or

12 (ii) a judgment had previously been obtained in another
13 state consistent with due process; or

14 (iii) the claim in the civil action is directly related to
15 and arises from the property sought to be attached; or

16 (iv) no forum is available to obtain a personal judgment
17 against the debtor in the United States or elsewhere; or

18 (7) the creditor has been unable to serve upon the debtor
19 the summons and complaint in the civil action because the debtor
20 has been inaccessible due to residence and employment in a
21 building where access is restricted.

22 Sec. 13. [REPEALER.]

23 Minnesota Statutes 2004, sections 551.05, subdivisions 5
24 and 6, and 571.914, subdivision 3, are repealed.

APPENDIX
Repealed Minnesota Statutes for 05-2491

551.05 ATTORNEY'S SUMMARY EXECUTION UPON FUNDS AT A
FINANCIAL INSTITUTION.

Subd. 5. Notice of objection. (a) The written objection to the judgment debtor's claim of exemption must be in substantially the following form:

STATE OF MINNESOTA
County of
.....(Judgment Creditor)
.....(Judgment Debtor)
.....(Garnishee) (Third Party)

DISTRICT COURT
.....JUDICIAL DISTRICT
OBJECTION TO
EXEMPTION CLAIM

The judgment creditor objects to your claim for exemption from garnishment, levy of execution, order for attachment (strike inapplicable language) for the following reason(s):

.....
.....
.....

Because of this objection, your financial institution will retain the funds you claimed to be exempt for an additional ten days. If you wish to request a hearing on your exemption claim, you need to do so within ten days from the date the objection was personally served on you, or within 13 days from the date the objection was mailed to you. You may request a hearing by completing the attached form and filing it with the court administrator.

1. The court administrator's office shall provide clerical assistance to help with the writing and filing of a Request for Hearing by any person not represented by counsel. The court administrator may charge a fee of \$1 for the filing of a Request for Hearing.

2. Upon the filing of a Request for Hearing, the court administrator shall schedule the matter for a hearing no later than five business days from the date of filing. The court administrator shall forthwith send a completed copy of the request, including the hearing date, time, and place to the adverse party and to the financial institution by first class mail.

3. If it is possible that the financial institution might not receive the request mailed from the court administrator within ten days, then you may want to personally deliver a copy of the request to the financial institution after you have filed your request with the court.

4. An order stating whether your funds are exempt shall be issued by the court within three days of the date of the hearing.

If you do not file a Request for Hearing within ten days of the date the objection was personally served on you, or within 13 days from the date the objection was mailed to you, your financial institution may turn your funds over to your judgment creditor.

If you file a Request for Hearing and your financial institution receives it within ten days of the date it received this objection, your financial institution will retain your funds claimed to be exempt until otherwise ordered by the court.

.....
Attorney for Judgment Creditor

Subd. 6. Request for hearing and notice for hearing. The request for hearing accompanying the objection notice must be in substantially the following form:

STATE OF MINNESOTA
County of
.....JUDICIAL DISTRICT

DISTRICT COURT

APPENDIX
Repealed Minnesota Statutes for 05-2491

.....(Judgment Creditor) REQUEST FOR HEARING
.....(Judgment Debtor) AND NOTICE FOR HEARING
.....(Garnishee)(Third Party)

I hereby request a hearing to resolve the exemption claim which has been made in this case regarding funds in the account of (Judgment Debtor) at the (Financial Institution).

I believe the property being held is exempt because

.....

.....

Dated:

.....
(JUDGMENT DEBTOR)

.....

(ADDRESS)

.....

HEARING DATE: TIME:

HEARING PLACE:

(Note to both parties: Bring with you to the hearing all documents and materials relevant to the exemption claim and objection. Failure to do so could delay the court's decision.)

571.914 OBJECTION TO EXEMPTION CLAIM.

Subd. 3. Request for hearing and notice for hearing.

The request for hearing accompanying the objection notice must be in substantially the following form:

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

.....(Creditor)

.....(Debtor) REQUEST FOR HEARING

AND NOTICE FOR HEARING

.....(Garnishee)

I hereby request a hearing to resolve the exemption claim which has been made in this case regarding funds in the account of (Debtor) at the (Financial Institution).

I believe the property being held is exempt because

.....

.....

Dated:.....

.....
(DEBTOR)

.....

(ADDRESS)

.....

HEARING DATE: TIME:

HEARING PLACE:

(Note to both parties: Bring with you to the hearing all documents and materials relevant to the exemption claim. Failure to do so could delay the court's decision.)

1 Senator Betzold from the Committee on Judiciary, to which
2 was referred

3 S.F. No. 1010: A bill for an act relating to creditors
4 remedies; prohibiting prejudgment garnishment in certain
5 circumstances; amending Minnesota Statutes 2004, sections
6 551.05, subdivisions 1a, 3, 4, by adding a subdivision; 571.71;
7 571.72, subdivision 4; 571.79; 571.912; 571.914, subdivisions 1,
8 2, 4; 571.93, subdivision 1; repealing Minnesota Statutes 2004,
9 sections 551.05, subdivisions 5, 6; 571.914, subdivision 3.

10 Reports the same back with the recommendation that the bill
11 be amended as follows:

12 Pages 8 to 11, delete sections 5 to 7

13 Pages 19 and 20, delete section 12

14 Renumber the sections in sequence

15 Amend the title as follows:

16 Page 1, lines 2 and 3, delete "prohibiting prejudgment
17 garnishment in certain circumstances" and insert "requiring
18 creditors to arrange for hearings on exemption claims"

19 Page 1, line 6, delete "571.71; 571.72, subdivision 4;
20 571.79;"

21 Page 1, line 7, delete "571.93, subdivision 1;"

22 And when so amended the bill do pass and be re-referred to
23 the Committee on Finance. Amendments adopted. Report adopted.

24
25 
26
(Committee Chair)

27
28 March 22, 2005.....
29 (Date of Committee recommendation)