

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

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**Senate**  

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**State of Minnesota**

**S.F. No. 314 - FAIR Plan - as amended by SCS0314A-1 amendment**

**Author:** Senator Linda Scheid

**Prepared by:** Christopher B. Stang, Senate Counsel (651/296-0539)

**Date:** April 7, 2005

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Overview

This bill involves the FAIR plan, which provides property and liability insurance to businesses and individuals who cannot get insurance for their business property or homes in the private insurance market. Minnesota law requires all property and casualty insurers doing business in the state to participate in the FAIR plan.

**Section 1** provides that FAIR plan insurance policies need not comply with the requirement that the full policy limit be paid in case of a total loss and that a partial loss be fully paid. If the property was overinsured, the FAIR plan must refund to the policyholder the portion of the premium attributable to the overinsurance.

**Section 2** provides that the bill is effective the day following final enactment and applies to policies issued or renewed on or after that date.

CBS:cs

Senators Scheid and Reiter introduced--

S.F. No. 314: Referred to the Committee on Commerce.

1 A bill for an act

2 relating to insurance; the Minnesota FAIR plan;  
3 regulating property and liability coverage; amending  
4 Minnesota Statutes 2004, section 65A.08, subdivision 2.

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

6 Section 1. Minnesota Statutes 2004, section 65A.08,  
7 subdivision 2, is amended to read:

8 Subd. 2. [AMOUNT COLLECTIBLE.] In the absence of any  
9 change increasing the risk, without the consent of the insurer,  
10 of which the burden of proof shall be upon it, and in the  
11 absence of intentional fraud on the part of the insured, the  
12 insurer shall pay the whole amount mentioned in the policy or  
13 renewal upon which it receives a premium, in case of total loss,  
14 and in case of partial loss, the full amount thereof.

15 This subdivision does not apply to policies issued by the  
16 Minnesota FAIR plan pursuant to section 65A.36.

17 Sec. 2. [EFFECTIVE DATE; APPLICATION.]

18 Section 1 is effective the day following final enactment  
19 and applies to policies issued or renewed on or after that date.

1 Senator ..... moves to amend S.F. No. 314 as follows:  
2 Page 1, line 16, before the period, insert "provided  
3 that, in the case of a total loss, the premium paid attributable  
4 to the difference between the whole amount mentioned in the  
5 policy and the amount paid for the loss is refunded to the  
6 insured"

*Scheid*

1 Senator ..... moves to amend S.F. No. 314 as follows:  
2 Page 1, line 16, before the period, insert "provided  
3 that, in the case of a total loss, the premium paid attributable  
4 to the difference between the whole amount mentioned in the  
5 policy and the amount paid for the loss is refunded to the  
6 insured"

1 Senator Scheid from the Committee on Commerce, to which was  
2 referred

3 S.F. No. 314: A bill for an act relating to insurance; the  
4 Minnesota FAIR plan; regulating property and liability coverage;  
5 amending Minnesota Statutes 2004, section 65A.08, subdivision 2.

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

8 Page 1, line 16, before the period, insert "provided  
9 that, in the case of a total loss, the premium paid attributable  
10 to the difference between the whole amount mentioned in the  
11 policy and the amount paid for the loss is refunded to the  
12 insured"

13 And when so amended the bill do pass. Amendments adopted.  
14 Report adopted.

15 .....  
16 (Committee Chair)

17  
18 April 11, 2005.....  
19 (Date of Committee recommendation)

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**State of Minnesota**

**HF 1650**

**S.F. No. 1559 - Cosmetology Regulations**

**Author:** Senator Thomas M. Bakk

**Prepared by:** Matthew S. Grosser, Senate Research (651/296-1890) *MLG*

**Date:** April 8, 2005

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The bill deals with miscellaneous technical details involved in the transfer of cosmetology regulation from the Department of Commerce to the newly expanded Board of Barber and Cosmetologist Examiners, formerly named the Board of Barber Examiners. The transfer was accomplished by 2004 legislation.

MSG:cs

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State of Minnesota

Printed  
Page No. 104

HOUSE OF REPRESENTATIVES

EIGHTY-FOURTH  
SESSION

HOUSE FILE No. 1650

March 9, 2005

Authored by Ruth, Gunther, Gazelka and Mahoney

The bill was read for the first time and referred to the Committee on Commerce and Financial Institutions

March 22, 2005

Committee Recommendation and Adoption of Report:

To Pass and placed on the Consent Calendar

Read Second Time

- 1 A bill for an act
- 2 relating to cosmetology; providing for the transfer of
- 3 regulatory oversight; modifying regulatory provisions;
- 4 providing conforming changes; amending Minnesota
- 5 Statutes 2004, sections 154.18; 154.22; 155A.03,
- 6 subdivision 4a; 155A.04; 155A.045, subdivision 1;
- 7 155A.08, subdivision 1; 155A.135; repealing Minnesota
- 8 Statutes 2004, sections 155A.03, subdivision 13;
- 9 155A.06; Minnesota Rules, part 2100.9300, subpart 1.
- 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 11 Section 1. Minnesota Statutes 2004, section 154.18, is
- 12 amended to read:
- 13 154.18 [FEES.]
- 14 (a) The fees collected, as required in this chapter,
- 15 chapter 214, and the rules of the board, shall be paid in
- 16 ~~advance-by-September-1-of-the-year-in-which-they-are-due~~ to the
- 17 executive secretary of the board. The executive secretary shall
- 18 deposit the fees in the general fund in the state treasury, ~~to~~
- 19 ~~be-disbursed-by-the-executive-secretary-on-the-order-of-the~~
- 20 ~~chair-in-payment-of-expenses-lawfully-incurred-by-the-board.~~
- 21 (b) The board shall charge the following fees:
- 22 (1) examination and certificate, registered barber, \$65;
- 23 (2) examination and certificate, apprentice, \$60;
- 24 (3) examination, instructor, \$160;
- 25 (4) certificate, instructor, \$45;
- 26 (5) temporary teacher or apprentice permit, \$50;
- 27 (6) renewal of license, registered barber, \$50;

- 1 (7) renewal of license, apprentice, \$45;
- 2 (8) renewal of license, instructor, \$60;
- 3 (9) renewal of temporary teacher permit, \$35;
- 4 (10) student permit, \$25;
- 5 (11) initial shop registration, \$60;
- 6 (12) initial school registration, \$1,010;
- 7 (13) renewal shop registration, \$60;
- 8 (14) renewal school registration, \$260;
- 9 (15) restoration of registered barber license, \$75;
- 10 (16) restoration of apprentice license, \$70;
- 11 (17) restoration of shop registration, \$85;
- 12 (18) change of ownership or location, \$35;
- 13 (19) duplicate license, \$20; and
- 14 (20) home study course, \$75.

15 Sec. 2. Minnesota Statutes 2004, section 154.22, is  
16 amended to read:

17 154.22 [BOARD OF BARBER AND COSMETOLOGIST EXAMINERS  
18 CREATED; TERMS.]

19 (a) A Board of Barber and Cosmetologist Examiners is  
20 established to consist of three barber members, three  
21 cosmetologist members, and one public member, as defined in  
22 section 214.02, appointed by the governor.

23 (b) The barber members shall be persons who have practiced  
24 as registered barbers in this state for at least five years  
25 immediately prior to their appointment; shall be graduates from  
26 the 12th grade of a high school or have equivalent education,  
27 and shall have knowledge of the matters to be taught in  
28 registered barber schools, as set forth in section 154.07. One  
29 of the barber members shall be a member of, or recommended by, a  
30 union of journeymen barbers that has existed at least two years,  
31 and one barber member shall be a member of, or recommended by, a  
32 professional organization of barbers.

33 (c) All cosmetologist members must be currently licensed in  
34 the field of cosmetology in the-state-of Minnesota, have  
35 practiced in the licensed occupation for at least five years  
36 immediately prior to their appointment, be graduates from the

1 12th grade of high school or have equivalent education, and have  
 2 knowledge of sections 155A.01 to 155A.16 and Minnesota Rules,  
 3 chapters 2642 and 2644. The cosmetologist members shall be  
 4 members of, or recommended by, a professional organization of  
 5 cosmetologists, manicurists, or estheticians.

6 (d) Membership terms, compensation of members, removal of  
 7 members, the filling of membership vacancies, and fiscal year  
 8 and reporting requirements shall be as provided in sections  
 9 214.07 to 214.09. The provision of staff, administrative  
 10 services and office space; the review and processing of  
 11 complaints; the setting of board fees; and other provisions  
 12 relating to board operations shall be as provided in chapter 214.

13 (e) Members appointed to fill vacancies caused by death,  
 14 resignation, or removal shall serve during the unexpired term of  
 15 their predecessors.

16 (f) The barber members of the board shall separately  
 17 oversee administration, enforcement, and regulation of, and  
 18 adoption of rules under, sections 154.01 to 154.26. The  
 19 cosmetologist members of the board shall separately oversee  
 20 administration, enforcement, and regulation of, and adoption of  
 21 rules under, sections 155A.01 to 155A.16. Staff hired by the  
 22 board, including inspectors, shall serve both professions.

23 Sec. 3. Minnesota Statutes 2004, section 155A.03,  
 24 subdivision 4a, is amended to read:

25 Subd. 4a. [LICENSED PRACTICE.] "Licensed practice" means  
 26 the practice of cosmetology in a licensed salon or the practice  
 27 of an esthetician in connection with medical care in relation to  
 28 esthiology in a licensed-physician's the office of a licensed  
 29 physician.

30 Sec. 4. Minnesota Statutes 2004, section 155A.04, is  
 31 amended to read:

32 155A.04 [ADMINISTRATION.]

33 Subdivision 1. [~~COMMISSIONER'S~~ BOARD'S POWERS AND DUTIES;  
 34 ~~GENERALLY.~~] The ~~commissioner-of-commerce-shall-have~~ board has  
 35 the power and duties necessary for the administration of the  
 36 provisions of this chapter.

1 Subd. 2. [HIRING AND ASSIGNMENT OF EMPLOYEES.] The  
 2 commissioner-~~shall have~~ board has the authority to hire in-the  
 3 ~~classified-service, or to assign to employees of the Department~~  
 4 ~~of Commerce,~~ qualified personnel in the classified service to  
 5 assist in administering the law, including those for the testing  
 6 and licensing of applicants and the continuing inspections  
 7 required.

8 Sec. 5. Minnesota Statutes 2004, section 155A.045,  
 9 subdivision 1, is amended to read:

10 Subdivision 1. [SCHEDULE.] The fee schedule for licensees  
 11 is as follows:

12 (a) Three-year license fees:

13 (1) cosmetologist, manicurist, esthetician, \$90 for each  
 14 initial license, and \$60 for each renewal;

15 (2) instructor, manager, \$120 for each initial license, and  
 16 \$90 for each renewal;

17 (3) ~~licensed physician's office, \$130 for each initial~~  
 18 ~~license, and \$100 for each renewal,~~

19 ~~(4)~~ salon, \$130 for each initial license, and \$100 for each  
 20 renewal; and

21 ~~(5)~~ (4) school, \$1,500.

22 (b) Penalties:

23 (1) reinspection fee, variable; and

24 (2) manager with lapsed practitioner, \$25.

25 (c) Administrative fees:

26 (1) certificate of identification, \$20; and

27 (2) school original application, \$150.

28 (d) All fees established in this subdivision must be paid  
 29 to the executive secretary of the board ~~on or before September 1~~  
 30 ~~of the year in which they become due.~~ The executive secretary  
 31 of the board shall deposit the fees in the general fund in the  
 32 state treasury, ~~to be disbursed by the executive secretary on~~  
 33 ~~the order of the chair in payment of expenses lawfully incurred~~  
 34 ~~by the board.~~

35 Sec. 6. Minnesota Statutes 2004, section 155A.08,  
 36 subdivision 1, is amended to read:

1           Subdivision 1. [LICENSING.] Any person who offers  
2 cosmetology services for compensation in this state shall be  
3 licensed as a salon if not employed by another licensed salon or  
4 as an esthetician in connection with medical care in relation to  
5 esthiology in a-licensed-physician's-area the office of a  
6 licensed physician.

7           Sec. 7. Minnesota Statutes 2004, section 155A.135, is  
8 amended to read:

9           155A.135 [ENFORCEMENT.]

10          The provisions of section ~~45-027~~ 154.161 apply to the  
11 administration of sections 155A.01 to 155A.16.

12          Sec. 8. [TRANSFER OF POWERS.]

13          All powers, duties, and obligations of the commissioner of  
14 commerce in Minnesota Statutes, chapter 155A, are transferred to  
15 the Board of Barber and Cosmetologist Examiners under Minnesota  
16 Statutes, section 15.039, except as otherwise prescribed in this  
17 act.

18          Sec. 9. [REVISOR INSTRUCTION.]

19          The revisor shall: (1) renumber Minnesota Statutes,  
20 sections 154.18, 154.22, and 154.23, as Minnesota Statutes,  
21 sections 154.003, 154.001, and 154.002, respectively; (2)  
22 renumber Minnesota Statutes, chapter 155A, in Minnesota  
23 Statutes, chapter 154, following Minnesota Statutes, section  
24 154.26; and (3) correct references to these sections in  
25 Minnesota Statutes and Minnesota Rules. The revisor shall  
26 delete "Board of Barber Examiners" and substitute "Board of  
27 Barber and Cosmetologist Examiners" in Minnesota Rules and shall  
28 delete "commissioner of commerce", "commissioner," and  
29 "department" where it means the commissioner or Department of  
30 Commerce, and substitute "board" or "Board of Barber and  
31 Cosmetologist Examiners," as appropriate, in Minnesota Rules,  
32 chapters 2642 and 2644. The revisor shall renumber Minnesota  
33 Rules, chapters 2642 and 2644, as chapters 2105 and 2110,  
34 respectively, and shall correct references to the renumbered  
35 parts and chapters.

36          Sec. 10. [REPEALER.]

1        (a) Minnesota Statutes 2004, sections 155A.03, subdivision  
2 13; and 155A.06, are repealed.

3        (b) Minnesota Rules, part 2100.9300, subpart 1, is repealed.

APPENDIX  
Repealed Minnesota Statutes for 05-3087

155A.03 DEFINITIONS.

Subd. 13. **Commissioner.** "Commissioner" means the commissioner of commerce.

155A.06 ADVISORY COUNCIL.

Subdivision 1. **Creation.** The Minnesota Cosmetology Advisory Council consists of 11 members, as follows: Three members representative of consumers; four cosmetologists or shop managers; three cosmetology school representatives, at least one of whom shall represent public cosmetology schools and one represent private cosmetology schools; and one representative of manufacturers of cosmetology products. The chair shall be selected at the first meeting each year by the council from among its members by majority vote and shall serve until a successor is elected.

Subd. 2. **Appointments.** Appointments to the council shall be made by the commissioner in accordance with section 15.059.

Subd. 3. **Membership terms.** Each member of the council shall be appointed for a four-year term, except that in making the appointments, the governor shall appoint members so that appointments do not expire concurrently.

Subd. 4. **Duties.** The council shall meet at least annually, at the call of the commissioner. The council shall advise the commissioner of the availability of cosmetology services and their ethical and safe operation and on other matters as the commissioner considers appropriate. The commissioner may consult with the council before adopting any rules, testing instruments, criteria for inspections, and other matters as the commissioner considers appropriate.

Subd. 5. **Compensation.** Members of the council shall be compensated for expenses as provided in section 15.059 and the council shall expire on June 30, 1997.

1 Senator Scheid from the Committee on Commerce, to which was  
2 referred

3 H.F. No. 1650: A bill for an act relating to cosmetology;  
4 providing for the transfer of regulatory oversight; modifying  
5 regulatory provisions; providing conforming changes; amending  
6 Minnesota Statutes 2004, sections 154.18; 154.22; 155A.03,  
7 subdivision 4a; 155A.04; 155A.045, subdivision 1; 155A.08,  
8 subdivision 1; 155A.135; repealing Minnesota Statutes 2004,  
9 sections 155A.03, subdivision 13; 155A.06; Minnesota Rules, part  
10 2100.9300, subpart 1.

11 Reports the same back with the recommendation that the bill  
12 do pass and be placed on the Consent Calendar. Report adopted.

13

14

*Amida Scheid*  
.....  
(Committee Chair)

15

16

17

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April 11, 2005.....  
(Date of Committee recommendation)

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

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**State of Minnesota**

## **S.F. No. 2010 - Weights and Measures**

**Author:** Senator Thomas M. Bakk

**Prepared by:** Matthew S. Grosser, Senate Research (651/296-1890)

**Date:** April 8, 2005

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The bill makes technical changes to weights and measures in statute and rules and updates standard references. The bill also delays the repeal of petroleum tank release clean-up provisions and authorizes the Petroleum Tank Release Compensation Board to use the expedited process to adopt rules for consultant services.

**Sections 1, 10, 18, 19, 20, and 23 to 29** update superseded ASTM standard specifications.

**Section 2** permits the Petroleum Tank Release Compensation Board to use the expedited process to adopt rules for consultant services.

**Section 3** delays the repeal of petroleum tank release clean-up provisions.

**Section 4** updates an ISO standard concerning the general requirements for the competence of calibration and testing laboratories, and amends a reference to the body certifying meteorology laboratories in the Division of Weights and Measures.

**Section 5** specifies the federal code used for enforcing gasoline octane requirements.

**Section 6** amends the section of law regulating blenders of gasoline to specify its application to those who use ten percent ethanol by volume.

**Section 7** empowers the Director of the Division of Weights and Measures to issue citations of between \$100 and \$500 for violations of any provision in the chapter on weights and measures.

**Section 8** increases the size of samples of gasoline which may be taken for testing purposes to one-half gallon, and makes other clarifying changes related to petroleum products.

**Section 9** contains clarifying changes related to petroleum products.

**Section 11** requires disclosure of biodiesel volume percentages.

**Section 12** adds biodiesel to the list of products sold by volume.

**Sections 13, 14 and 22** contain clarifying changes related to ethanol.

**Section 15** deletes obsolete language concerning oxygenated gasoline sold before 1997.

**Section 16** makes conforming changes.

**Section 17** updates the disclosure requirement for ethanol and the duties of ethanol distributors. Imposes a duty upon the Director of the Division of Weights and Measures to furnish, upon request, the requirements of federal code.

**Section 21** updates an ASTM standard for biodiesel and clarifies that the standard is not in effect until the biodiesel requirement in statute becomes effective.

**Section 30** instructs the Revisor of Statutes to correct cross-references.

**Section 31** repeals two subdivisions relating to federal Environmental Protection Agency control of carbon monoxide.

MSG:cs

Senator Bakk introduced--

S.F. No. 2010: Referred to the Committee on Commerce.

1 A bill for an act

2 relating to weights and measures; updating standards  
 3 and making other technical changes to weights and  
 4 measures provisions; delaying repeal of petroleum tank  
 5 release cleanup provisions; authorizing Petroleum Tank  
 6 Release Compensation Board to adopt rules for  
 7 consultant services; amending Minnesota Statutes 2004,  
 8 sections 41A.09, subdivision 2a; 115C.07, subdivision  
 9 3; 115C.13; 239.011, subdivision 2; 239.05,  
 10 subdivision 10b, by adding a subdivision; 239.09;  
 11 239.75, subdivisions 1, 5; 239.761; 239.77, by adding  
 12 a subdivision; 239.79, subdivision 4; 239.791,  
 13 subdivisions 1, 7, 8, 15; 239.792; 296A.01,  
 14 subdivisions 2, 7, 8, 14, 19, 20, 22, 23, 24, 25, 26,  
 15 28; repealing Minnesota Statutes 2004, section 239.05,  
 16 subdivisions 6a, 6b.

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

18 Section 1. Minnesota Statutes 2004, section 41A.09,  
 19 subdivision 2a, is amended to read:

20 Subd. 2a. [DEFINITIONS.] For the purposes of this section,  
 21 the terms defined in this subdivision have the meanings given  
 22 them.

23 (a) "Ethanol" means fermentation ethyl alcohol derived from  
 24 agricultural products, including potatoes, cereal grains, cheese  
 25 whey, and sugar beets; forest products; or other renewable  
 26 resources, including residue and waste generated from the  
 27 production, processing, and marketing of agricultural products,  
 28 forest products, and other renewable resources, that:

29 (1) meets all of the specifications in ASTM specification  
 30 ~~D4806-01~~ D4806-04a; and

31 (2) is denatured as specified in Code of Federal

1 Regulations, title 27, parts 20 and 21.

2 (b) "Ethanol plant" means a plant at which ethanol is  
3 produced.

4 (c) "Commissioner" means the commissioner of agriculture.

5 Sec. 2. Minnesota Statutes 2004, section 115C.07,  
6 subdivision 3, is amended to read:

7 Subd. 3. [RULES.] (a) The board shall adopt rules  
8 regarding its practices and procedures, the form and procedure  
9 for applications for compensation from the fund, procedures for  
10 investigation of claims and specifying the costs that are  
11 eligible for reimbursement from the fund.

12 (b) The board may adopt rules requiring certification of  
13 environmental consultants.

14 (c) The board may adopt other rules necessary to implement  
15 this chapter.

16 (d) The board may use section 14.389 to adopt rules  
17 specifying the competitive bidding requirements for consultant  
18 services proposals.

19 (e) The board may use section 14.389 to adopt rules  
20 specifying the written proposal and invoice requirements for  
21 consultant services.

22 Sec. 3. Minnesota Statutes 2004, section 115C.13, is  
23 amended to read:

24 115C.13 [REPEALER.]

25 Sections 115C.01, 115C.02, 115C.021, 115C.03, 115C.04,  
26 115C.045, 115C.05, 115C.06, 115C.065, 115C.07, 115C.08, 115C.09,  
27 115C.093, 115C.094, 115C.10, 115C.11, 115C.111, 115C.112,  
28 115C.113, 115C.12, and 115C.13, are repealed effective June 30,

29 2007 ~~2012~~. 2007

30 Sec. 4. Minnesota Statutes 2004, section 239.011,  
31 subdivision 2, is amended to read:

32 Subd. 2. [DUTIES AND POWERS.] To carry out the  
33 responsibilities in section 239.01 and subdivision 1, the  
34 director:

35 (1) shall take charge of, keep, and maintain in good order  
36 the standard of weights and measures of the state and keep a

1 seal so formed as to impress, when appropriate, the letters  
2 "MINN" and the date of sealing upon the weights and measures  
3 that are sealed;

4 (2) has general supervision of the weights, measures, and  
5 weighing and measuring devices offered for sale, sold, or in use  
6 in the state;

7 (3) shall maintain traceability of the state standards to  
8 the national standards of the National Institute of Standards  
9 and Technology;

10 (4) shall enforce this chapter;

11 (5) shall grant variances from department rules, within the  
12 limits set by rule, when appropriate to maintain good commercial  
13 practices or when enforcement of the rules would cause undue  
14 hardship;

15 (6) shall conduct investigations to ensure compliance with  
16 this chapter;

17 (7) may delegate to division personnel the  
18 responsibilities, duties, and powers contained in this section;

19 (8) shall test annually, and approve when found to be  
20 correct, the standards of weights and measures used by the  
21 division, by a town, statutory or home rule charter city, or  
22 county within the state, or by a person using standards to  
23 repair, adjust, or calibrate commercial weights and measures;

24 (9) shall inspect and test weights and measures kept,  
25 offered, or exposed for sale;

26 (10) shall inspect and test, to ascertain if they are  
27 correct, weights and measures commercially used to:

28 (i) determine the weight, measure, or count of commodities  
29 or things sold, offered, or exposed for sale, on the basis of  
30 weight, measure, or count; and

31 (ii) compute the basic charge or payment for services  
32 rendered on the basis of weight, measure, or count;

33 (11) shall approve for use and mark weights and measures  
34 that are found to be correct;

35 (12) shall reject, and mark as rejected, weights and  
36 measures that are found to be incorrect and may seize them if

1 those weights and measures:

2 (i) are not corrected within the time specified by the  
3 director;

4 (ii) are used or disposed of in a manner not specifically  
5 authorized by the director; or

6 (iii) are found to be both incorrect and not capable of  
7 being made correct, in which case the director shall condemn  
8 those weights and measures;

9 (13) shall weigh, measure, or inspect packaged commodities  
10 kept, offered, or exposed for sale, sold, or in the process of  
11 delivery, to determine whether they contain the amount  
12 represented and whether they are kept, offered, or exposed for  
13 sale in accordance with this chapter and department rules. In  
14 carrying out this section, the director must employ recognized  
15 sampling procedures, such as those contained in National  
16 Institute of Standards and Technology Handbook 133, "Checking  
17 the Net Contents of Packaged Goods";

18 (14) shall prescribe the appropriate term or unit of weight  
19 or measure to be used for a specific commodity when an existing  
20 term or declaration of quantity does not facilitate value  
21 comparisons by consumers, or creates an opportunity for consumer  
22 confusion;

23 (15) shall allow reasonable variations from the stated  
24 quantity of contents, including variations caused by loss or  
25 gain of moisture during the course of good distribution practice  
26 or by unavoidable deviations in good manufacturing practice,  
27 only after the commodity has entered commerce within the state;

28 (16) shall inspect and test petroleum products in  
29 accordance with this chapter and chapter 296A;

30 (17) shall distribute and post notices for used motor oil  
31 and used motor oil filters and lead acid battery recycling in  
32 accordance with sections 239.54, 325E.11, and 325E.115;

33 (18) shall collect inspection fees in accordance with  
34 sections 239.10 and 239.101; and

35 (19) shall provide metrological services and support to  
36 businesses and individuals in the United States who wish to

1 market products and services in the member nations of the  
2 European Economic Community, and other nations outside of the  
3 United States by:

4 (i) meeting, to the extent practicable, the measurement  
5 quality assurance standards described in the International  
6 Standards Organization ISO 9000~~7~~-Guide-25 17025;

7 (ii) maintaining, to the extent practicable, certification  
8 of the metrology laboratory by ~~a-governing-body-appointed-by-the~~  
9 ~~European-Economic-Community~~ an internationally accepted  
10 accrediting body such as the National Voluntary Laboratory  
11 Accreditation Program (NVLAP); and

12 (iii) providing calibration and consultation services to  
13 metrology laboratories in government and private industry in the  
14 United States.

15 Sec. 5. Minnesota Statutes 2004, section 239.05, is  
16 amended by adding a subdivision to read:

17 Subd. 3a. [AUTOMOTIVE FUEL.] For the purpose of enforcing  
18 the gasoline octane requirements in section 239.792, "automotive  
19 fuel" has the meaning given it in Code of Federal Regulations,  
20 title 16, section 306.0.

21 Sec. 6. Minnesota Statutes 2004, section 239.05,  
22 subdivision 10b, is amended to read:

23 Subd. 10b. [OXYGENATE ETHANOL BLENDER.] "Oxygenate Ethanol  
24 blender" means a person who has-registered-with-the-division-to  
25 blend-and-distribute~~7~~-transport~~7~~-sell~~7~~-or-offer blends and  
26 distributes, transports, sells, or offers to sell gasoline  
27 containing a-minimum-of-2.0-percent~~7~~-and-an-average-of-2.7 ten  
28 percent oxygen ethanol by weight volume.

29 Sec. 7. Minnesota Statutes 2004, section 239.09, is  
30 amended to read:

31 239.09 [SPECIAL POLICE POWERS.]

32 When necessary to enforce this chapter or rules adopted  
33 under the authority granted by section 239.06, the director is:

34 (1) authorized and empowered to arrest, without formal  
35 warrant, any violator of sections 325E.11 and 325E.115 or of the  
36 statute in relation to weights and measures;

1 (2) empowered to seize for use as evidence and without  
 2 formal warrant, any false weight, measure, weighing or measuring  
 3 device, package, or commodity found to be used, retained, or  
 4 offered or exposed for sale or sold in violation of law;

5 (3) during normal business hours, authorized to enter  
 6 commercial premises;

7 (4) if the premises are not open to the public, authorized  
 8 to enter commercial premises only after presenting credentials  
 9 and obtaining consent or after obtaining a search warrant;

10 (5) empowered to issue stop-use, hold, and removal orders  
 11 with respect to weights and measures commercially used, and  
 12 packaged commodities or bulk commodities kept, offered, or  
 13 exposed for sale, that do not comply with the weights and  
 14 measures laws; and

15 (6) empowered, upon reasonable suspicion of a violation of  
 16 the weights and measures laws, to stop a commercial vehicle and,  
 17 after presentation of credentials, inspect the contents of the  
 18 vehicle, require that the person in charge of the vehicle  
 19 produce documents concerning the contents, and require the  
 20 person to proceed with the vehicle to some specified place for  
 21 inspection; and

22 (7) empowered, after written warning, to issue citations of  
 23 not less than \$100 and not more than \$500 to a person who  
 24 violates any provision of this chapter, any provision of the  
 25 rules adopted under the authority contained in this chapter, or  
 26 any provision of statutes enforced by the division of weights  
 27 and measures.

28 Sec. 8. Minnesota Statutes 2004, section 239.75,  
 29 subdivision 1, is amended to read:

30 Subdivision 1. [INSPECTION TO BE MADE.] The director shall:

31 (1) take samples, free of charge, of petroleum products  
 32 wherever processed, blended, held, stored, imported,  
 33 transferred, offered for sale or use, or sold in Minnesota,  
 34 limiting each sample to:

35 ~~(i) two-tenths-of-one~~ one-half gallon, ~~except when an~~  
 36 ~~octane test is planned, or~~

1 ~~(ii)-seven-tenths-of-one-gallon-for-an-octane-test;~~

2 (2) inspect and test petroleum product samples according to  
3 the methods of ASTM or other valid test methods adopted by rule,  
4 to determine whether the products comply with the specifications  
5 in section 239.761;

6 (3) inspect petroleum product storage tanks to ensure that  
7 the products are free from water and impurities;

8 (4) inspect and test samples submitted to the department by  
9 a licensed distributor, making the test results available to the  
10 distributor;

11 (5) inspect the labeling, price posting, and price  
12 advertising of petroleum product dispensers and advertising  
13 signs at businesses or locations where petroleum products are  
14 sold, offered for sale or use, or dispensed into motor vehicles;

15 (6) maintain records of all inspections and tests according  
16 to the records retention policies of the Department of  
17 Administration;

18 (7) delegate to division personnel, at the director's  
19 discretion, any or all of the responsibilities, duties, and  
20 powers in sections 239.75 to 239.80;

21 (8) publish octane test data and information to assist  
22 persons who use, produce and, distribute, or sell gasoline-and  
23 gasoline-oxygenate-blends petroleum-based heating and engine  
24 fuels;

25 ~~(9) register-gasoline-oxygenate-blenders-according-to-the~~  
26 ~~requirements-of-the-EPA;~~

27 ~~(10)~~ audit the records of any person responsible for the  
28 product to determine compliance with sections 239.75 to 239.792;

29 ~~(11)~~ (10) after consulting with the commissioner of-the  
30 ~~Pollution-Control-Agency,~~ grant a temporary exemption from the  
31 ~~oxygenated-gasoline~~ gasoline-ethanol blending requirements in  
32 section 239.791 if the supply of oxygenate ethanol is  
33 insufficient to produce gasoline-oxygenate gasoline-ethanol  
34 blends ~~during-an-EPA-designated-carbon-monoxide-control-period;~~  
35 and

36 ~~(12)~~ (11) adopt, as an enforcement policy for the division,

1 reasonable margins of uncertainty for the tests used to  
2 determine compliance with the specifications in section 239.761,  
3 the oxygen percentages in section 239.791, and the octane  
4 requirements in section 239.792 and apply the margins of  
5 uncertainty to only tests performed by the division, not by  
6 adding the margins to uncertainties in tests performed by any  
7 person responsible for the product.

8 Sec. 9. Minnesota Statutes 2004, section 239.75,  
9 subdivision 5, is amended to read:

10 Subd. 5. [PRODUCT QUALITY, RESPONSIBILITY.] After a  
11 ~~gasoline-product~~ petroleum-based engine fuel is purchased,  
12 transferred, or otherwise removed from a refinery or terminal,  
13 the person responsible for the product shall:

14 (1) keep the product free from contamination with water and  
15 impurities;

16 (2) not blend the product with dissimilar petroleum  
17 products, for example, gasoline must not be blended with diesel  
18 fuel;

19 (3) not blend the product with any contaminant, dye,  
20 chemical, or additive, except:

21 (i) agriculturally derived, denatured ethanol that complies  
22 with the specifications in this chapter;

23 (ii) an antiknock additive, or an additive designed to  
24 replace tetra-ethyl lead, that is registered by the EPA; or

25 (iii) a dye to distinguish heating fuel from low sulfur  
26 diesel fuel; and

27 (4) maintain a record of the name or chemical composition  
28 of the additive, with the product shipping manifest or bill of  
29 lading for one year after the date of the manifest or bill.

30 Sec. 10. Minnesota Statutes 2004, section 239.761, is  
31 amended to read:

32 239.761 [PETROLEUM PRODUCT SPECIFICATIONS.]

33 Subdivision 1. [APPLICABILITY.] A person responsible for  
34 the product must meet the specifications in this section. The  
35 specifications apply to petroleum products processed, held,  
36 stored, imported, transferred, distributed, offered for

1 distribution, offered for sale or use, or sold in Minnesota.

2 Subd. 2. [COORDINATION WITH DEPARTMENTS OF REVENUE AND  
3 AGRICULTURE.] The petroleum product specifications in this  
4 section are intended to match the definitions and specifications  
5 in sections 41A.09 and 296A.01. Petroleum products named in  
6 this section are defined in section 296A.01.

7 Subd. 3. [GASOLINE.] (a) Gasoline that is not blended with  
8 ethanol must not be contaminated with water or other impurities  
9 and must comply with ASTM specification ~~D4814-01~~ D4814-04a.  
10 Gasoline that is not blended with ethanol must also comply with  
11 the volatility requirements in Code of Federal Regulations,  
12 title 40, part 80.

13 (b) After gasoline is sold, transferred, or otherwise  
14 removed from a refinery or terminal, a person responsible for  
15 the product:

16 (1) may blend the gasoline with agriculturally derived  
17 ethanol as provided in subdivision 4;

18 (2) shall not blend the gasoline with any oxygenate other  
19 than denatured, agriculturally derived ethanol;

20 (3) shall not blend the gasoline with other petroleum  
21 products that are not gasoline or denatured, agriculturally  
22 derived ethanol;

23 (4) shall not blend the gasoline with products commonly and  
24 commercially known as casinghead gasoline, absorption gasoline,  
25 condensation gasoline, drip gasoline, or natural gasoline; and

26 (5) may blend the gasoline with a detergent additive, an  
27 antiknock additive, or an additive designed to replace  
28 tetra-ethyl lead, that is registered by the EPA.

29 Subd. 4. [GASOLINE BLENDED WITH ETHANOL.] (a) Gasoline may  
30 be blended with up to ten percent, by volume, agriculturally  
31 derived, denatured ethanol that complies with the requirements  
32 of subdivision 5.

33 (b) A gasoline-ethanol blend must:

34 (1) comply with the volatility requirements in Code of  
35 Federal Regulations, title 40, part 80;

36 (2) comply with ASTM specification ~~D4814-01~~ D4814-04a, or

1 the gasoline base stock from which a gasoline-ethanol blend was  
2 produced must comply with ASTM specification ~~D4814-01~~ D4814-04a;  
3 and

4 (3) not be blended with casinghead gasoline, absorption  
5 gasoline, condensation gasoline, drip gasoline, or natural  
6 gasoline after the gasoline-ethanol blend has been sold,  
7 transferred, or otherwise removed from a refinery or terminal.

8 Subd. 5. [DENATURED ETHANOL.] Denatured ethanol that is to  
9 be blended with gasoline must be agriculturally derived and must  
10 comply with ASTM specification ~~D4806-01~~ D4806-04a. This  
11 includes the requirement that ethanol may be denatured only as  
12 specified in Code of Federal Regulations, title 27, parts 20 and  
13 21.

14 Subd. 6. [GASOLINE BLENDED WITH NONETHANOL OXYGENATE.] (a)  
15 A person responsible for the product shall comply with the  
16 following requirements:

17 (1) after July 1, 2000, gasoline containing in excess of  
18 one-third of one percent, in total, of nonethanol oxygenates  
19 listed in paragraph (b) must not be sold or offered for sale at  
20 any time in this state; and

21 (2) after July 1, 2005, gasoline containing any of the  
22 nonethanol oxygenates listed in paragraph (b) must not be sold  
23 or offered for sale in this state.

24 (b) The oxygenates prohibited under paragraph (a) are:

25 (1) methyl tertiary butyl ether, as defined in section  
26 296A.01, subdivision 34;

27 (2) ethyl tertiary butyl ether, as defined in section  
28 296A.01, subdivision 18; or

29 (3) tertiary amyl methyl ether.

30 (c) Gasoline that is blended with a nonethanol oxygenate  
31 must comply with ASTM specification ~~D4814-01~~ D4814-04a.

32 Nonethanol oxygenates must not be blended into gasoline after  
33 the gasoline has been sold, transferred, or otherwise removed  
34 from a refinery or terminal.

35 Subd. 7. [HEATING FUEL OIL.] Heating fuel oil must comply  
36 with ASTM specification ~~D396-01~~ D396-02a.

1 Subd. 8. [DIESEL FUEL OIL.] Diesel fuel oil must comply  
2 with ASTM specification ~~D975-01a~~ D975-04b, except that diesel  
3 fuel oil is not required to meet the diesel lubricity standard  
4 until the date that the biodiesel fuel requirement in section  
5 239.77, subdivision 2, becomes effective or ~~June 1, 2006,~~ <sup>Dec. 31, 2005</sup>  
6 whichever comes first.

7 Subd. 9. [KEROSENE.] Kerosene must comply with ASTM  
8 specification ~~D3699-01~~ D3699-03.

9 Subd. 10. [AVIATION GASOLINE.] Aviation gasoline must  
10 comply with ASTM specification ~~D910-00~~ D910-04.

11 Subd. 11. [AVIATION TURBINE FUEL, JET FUEL.] Aviation  
12 turbine fuel and jet fuel must comply with ASTM specification  
13 ~~D1655-01~~ D1655-04.

14 Subd. 12. [GAS TURBINE FUEL OIL.] Fuel oil for use in  
15 nonaviation gas turbine engines must comply with ASTM  
16 specification ~~D2880-00~~ D2880-03.

17 Subd. 13. [E85.] A blend of ethanol and gasoline,  
18 containing at least 60 percent ethanol and not more than 85  
19 percent ethanol, produced for use as a motor fuel in alternative  
20 fuel vehicles as defined in section 296A.01, subdivision 5, must  
21 comply with ASTM specification D5798-99 (2004).

22 Subd. 14. [M85.] A blend of methanol and gasoline,  
23 containing at least 85 percent methanol, produced for use as a  
24 motor fuel in alternative fuel vehicles as defined in section  
25 296A.01, subdivision 5, must comply with ASTM specification  
26 D5797-96.

27 Sec. 11. Minnesota Statutes 2004, section 239.77, is  
28 amended by adding a subdivision to read:

29 Subd. 4. [DISCLOSURE.] A refinery or terminal shall  
30 provide, at the time diesel fuel is sold or transferred from the  
31 refinery or terminal, a bill of lading or shipping manifest to  
32 the person who receives the fuel. For biodiesel-blended  
33 product, the bill of lading or shipping manifest must disclose  
34 biodiesel content, stating volume percentage, or gallons of  
35 biodiesel per gallons of petroleum diesel base-stock, or an ASTM  
36 "Bxx" designation where "xx" denotes the volume percent

1 biodiesel included in the blended product. This subdivision  
2 does not apply to sales or transfers of biodiesel blend stock  
3 between refineries, between terminals, or between a refinery and  
4 a terminal.

5 Sec. 12. Minnesota Statutes 2004, section 239.79,  
6 subdivision 4, is amended to read:

7 Subd. 4. [SALE OF CERTAIN PETROLEUM PRODUCTS ON GROSS  
8 VOLUME BASIS.] A person responsible for the products listed in  
9 this subdivision shall transfer, ship, distribute, offer for  
10 distribution, sell, or offer to sell the products by volume.  
11 Volumetric measurement of the product must not be temperature  
12 compensated, or adjusted by any other factor. This subdivision  
13 applies to gasoline, number one and number two diesel fuel oils,  
14 number one and number two heating fuel oils, kerosene, denatured  
15 ethanol ~~that-is-to-be-blended-into-gasoline,--and-an-oxygenate~~  
16 ~~that-is-to-be-blended-into-gasoline,~~ and biodiesel. This  
17 subdivision does not apply to the measurement of petroleum  
18 products transferred, sold, or traded between refineries,  
19 between refineries and terminals, or between terminals.

20 Sec. 13. Minnesota Statutes 2004, section 239.791,  
21 subdivision 1, is amended to read:

22 Subdivision 1. [MINIMUM ETHANOL CONTENT REQUIRED.] (a)  
23 Except as provided in subdivisions 10 to 14, a person  
24 responsible for the product shall ensure that all gasoline sold  
25 or offered for sale in Minnesota must contain at least 10.0  
26 percent denatured ethanol by volume.

27 (b) For purposes of enforcing the minimum ethanol  
28 requirement of paragraph (a), a gasoline/ethanol blend will be  
29 construed to be in compliance if the ethanol content, exclusive  
30 of denaturants and permitted contaminants, comprises not less  
31 than 9.2 percent by volume and not more than 10.0 percent by  
32 volume of the blend as determined by an appropriate United  
33 States Environmental Protection Agency or American Society of  
34 Testing Materials standard method of analysis of alcohol/ether  
35 content in ~~motor~~ engine fuels.

36 Sec. 14. Minnesota Statutes 2004, section 239.791,

1 subdivision 7, is amended to read:

2 Subd. 7. [~~OXYGENATE~~ ETHANOL RECORDS; STATE AUDIT.] The  
3 director shall audit the records of registered ~~oxygenate~~ ethanol  
4 blenders to ensure that each blender has met all requirements in  
5 this chapter. Specific information or data relating to sales  
6 figures or to processes or methods of production unique to the  
7 blender or that would tend to adversely affect the competitive  
8 position of the blender must be only for the confidential use of  
9 the director, unless otherwise specifically authorized by the  
10 registered blender.

11 Sec. 15. Minnesota Statutes 2004, section 239.791,  
12 subdivision 8, is amended to read:

13 Subd. 8. [DISCLOSURE.] A refinery or terminal, shall  
14 provide, at the time gasoline is sold or transferred from the  
15 refinery or terminal, a bill of lading or shipping manifest to  
16 the person who receives the gasoline. For oxygenated gasoline,  
17 the bill of lading or shipping manifest must include the  
18 identity and the volume percentage or gallons of oxygenate  
19 included in the gasoline, and it must state: "This fuel  
20 contains an oxygenate. Do not blend this fuel with ethanol or  
21 with any other oxygenate." ~~For nonoxygenated gasoline sold or~~  
22 ~~transferred before October 17, 1997, the bill or manifest must~~  
23 ~~state:--"This fuel must not be sold at retail in a carbon~~  
24 ~~monoxide control area."~~ For nonoxygenated gasoline sold or  
25 transferred after September 30, 1997, the bill or manifest must  
26 state: "This fuel is not oxygenated. It must not be sold at  
27 retail in Minnesota." This subdivision does not apply to sales  
28 or transfers of gasoline between refineries, between terminals,  
29 or between a refinery and a terminal.

30 Sec. 16. Minnesota Statutes 2004, section 239.791,  
31 subdivision 15, is amended to read:

32 Subd. 15. [EXEMPTION FOR CERTAIN BLEND PUMPS.] (a) A  
33 person responsible for the product, who offers for sale, sells,  
34 or dispenses nonoxygenated premium gasoline under one or more of  
35 the exemptions in subdivisions 10 to 14, may sell, offer for  
36 sale, or dispense oxygenated gasoline that contains less than

1 the minimum amount of ethanol required under subdivision 1 if  
2 all of the following conditions are met:

3 (1) the blended gasoline has an octane rating of 88 or  
4 greater;

5 (2) the gasoline is a blend of oxygenated gasoline meeting  
6 the requirements of subdivision 1 with nonoxygenated premium  
7 gasoline;

8 (3) the blended gasoline contains not more than ten percent  
9 nonoxygenated premium gasoline;

10 (4) the blending of oxygenated gasoline with nonoxygenated  
11 gasoline occurs within the gasoline dispenser; and

12 (5) the gasoline station at which the gasoline is sold,  
13 offered for sale, or delivered is equipped to store gasoline in  
14 not more than two storage tanks.

15 (b) This subdivision applies only to those persons who meet  
16 the conditions in paragraph (a), clauses (1) through (5), on the  
17 ~~effective-date-of-this-act~~ August 1, 2004, and have registered  
18 with the director within three months of the ~~effective~~ that date  
19 ~~of-this-act~~.

20 Sec. 17. Minnesota Statutes 2004, section 239.792, is  
21 amended to read:

22 239.792 [~~GASOLINE-OCTANE~~ AUTOMOTIVE FUEL RATINGS,  
23 CERTIFICATION, AND POSTING.]

24 Subdivision 1. [~~DISCLOSURE~~ DUTIES OF REFINERS, IMPORTERS,  
25 AND PRODUCERS.] A ~~manufacturer, hauler, blender, agent, jobber,~~  
26 ~~consignment-agent~~ refiner, importer, or ~~distributor-who-sells,~~  
27 ~~delivers, or distributes gasoline or gasoline-oxygenate blends,~~  
28 ~~shall provide, at the time of delivery, a bill of lading or~~  
29 ~~shipping manifest to the person who receives the gasoline. The~~  
30 ~~bill or manifest must state the minimum octane of the gasoline~~  
31 ~~delivered. The stated octane number must be the average of the~~  
32 ~~"motor method" octane number and the "research method" octane~~  
33 ~~number as determined by the test methods in ASTM specification~~  
34 ~~D4814-01, or by a test method adopted by department~~  
35 rule producer of automotive fuel must comply with the automotive  
36 fuel rating, certification, and record-keeping requirements of

1 Code of Federal Regulations, title 16, sections 306.5 to 306.7.

2 Subd. 2. [~~DISPENSER-LABELING DUTIES OF DISTRIBUTORS.~~] A  
3 ~~person-responsible-for-the-product-shall-clearly, conspicuously,~~  
4 ~~and-permanently-label-each-gasoline-dispenser-that-is-used-to~~  
5 ~~sell-gasoline-or-gasoline-oxygenate-blends-at-retail-or-to~~  
6 ~~dispense-gasoline-or-gasoline-oxygenate-blends-into-the-fuel~~  
7 ~~supply-tanks-of-motor-vehicles, with-the-minimum-octane-of-the~~  
8 ~~gasoline-dispensed.--The-label-must-meet-the-following~~  
9 ~~requirements:~~

10 ~~(a)-The-octane-number-displayed-on-the-label-must-represent~~  
11 ~~the-average-of-the-"motor-method"-octane-number-and-the~~  
12 ~~"research-method"-octane-number-as-determined-by-the-test~~  
13 ~~methods-in-ASTM-specification-D4814-01, or-by-a-test-method~~  
14 ~~adopted-by-department-rule.~~

15 ~~(b)-The-label-must-be-at-least-2-1/2-inches-high-and-three~~  
16 ~~inches-wide, with-a-yellow-background, black-border, and-black~~  
17 ~~figures-and-letters.~~

18 ~~(c)-The-number-representing-the-octane-of-the-gasoline-must~~  
19 ~~be-at-least-one-inch-high.~~

20 ~~(d)-The-label-must-include-the-words-"minimum-octane"-and~~  
21 ~~the-term-"(R+M)/2"-or-"(RON+MON)/2."~~ A licensed distributor of  
22 automotive fuel must comply with the certification and  
23 record-keeping provisions of Code of Federal Regulations, title  
24 16, sections 306.8 and 306.9.

25 Subd. 3. [DUTIES OF RETAILERS.] A person responsible for  
26 the product who sells or transfers automotive fuel to a consumer  
27 must comply with the automotive fuel rating posting and  
28 record-keeping requirements, and the label specifications of  
29 Code of Federal Regulations, title 16, sections 306.10 to 306.12.

30 Subd. 4. [DUTIES OF DIRECTOR.] Upon request, the director  
31 shall provide any person with a copy of Code of Federal  
32 Regulations, title 16, part 306. Upon request, the director  
33 shall provide any distributor, retailer, or organization of  
34 distributors or retailers with the label specifications in Code  
35 of Federal Regulations, title 16, section 306.12.

36 Sec. 18. Minnesota Statutes 2004, section 296A.01,

1 subdivision 2, is amended to read:

2 Subd. 2. [AGRICULTURAL ALCOHOL GASOLINE.] "Agricultural  
3 alcohol gasoline" means a gasoline-ethanol blend of up to ten  
4 percent agriculturally derived fermentation ethanol derived from  
5 agricultural products, such as potatoes, cereal, grains, cheese  
6 whey, sugar beets, forest products, or other renewable  
7 resources, that:

8 (1) meets the specifications in ASTM specification ~~D4806-01~~  
9 D4806-04a; and

10 (2) is denatured as specified in Code of Federal  
11 Regulations, title 27, parts 20 and 21.

12 Sec. 19. Minnesota Statutes 2004, section 296A.01,  
13 subdivision 7, is amended to read:

14 Subd. 7. [AVIATION GASOLINE.] "Aviation gasoline" means  
15 any gasoline that is capable of use for the purpose of producing  
16 or generating power for propelling internal combustion engine  
17 aircraft, that meets the specifications in ASTM  
18 specification ~~D910-00~~ D910-04, and that either:

19 (1) is invoiced and billed by a producer, manufacturer,  
20 refiner, or blender to a distributor or dealer, by a distributor  
21 to a dealer or consumer, or by a dealer to consumer, as  
22 "aviation gasoline"; or

23 (2) whether or not invoiced and billed as provided in  
24 clause (1), is received, sold, stored, or withdrawn from storage  
25 by any person, to be used for the purpose of producing or  
26 generating power for propelling internal combustion engine  
27 aircraft.

28 Sec. 20. Minnesota Statutes 2004, section 296A.01,  
29 subdivision 8, is amended to read:

30 Subd. 8. [AVIATION TURBINE FUEL AND JET FUEL.] "Aviation  
31 turbine fuel" and "jet fuel" mean blends of hydrocarbons derived  
32 from crude petroleum, natural gasoline, and synthetic  
33 hydrocarbons, intended for use in aviation turbine engines, and  
34 that meet the specifications in ASTM specification  
35 ~~D1655-01~~ D1655.04.

36 Sec. 21. Minnesota Statutes 2004, section 296A.01,

1 subdivision 14, is amended to read:

2 Subd. 14. [DIESEL FUEL OIL.] "Diesel fuel oil" means a  
3 petroleum distillate or blend of petroleum distillate and  
4 residual fuels, intended for use as a motor fuel in internal  
5 combustion diesel engines, that meets the specifications in ASTM  
6 specification ~~D975-04a~~ D975-04b, except that diesel fuel oil is  
7 not required to meet the diesel lubricity standard until the  
8 date that the biodiesel fuel requirement in section 239.77,  
9 subdivision 2, becomes effective or <sup>DEC. 31, 2005</sup> ~~June 1, 2006~~, whichever  
10 comes first. Diesel fuel includes number 1 and number 2 fuel  
11 oils. K-1 kerosene is not diesel fuel unless it is blended with  
12 diesel fuel for use in motor vehicles.

13 Sec. 22. Minnesota Statutes 2004, section 296A.01,  
14 subdivision 19, is amended to read:

15 Subd. 19. [E85.] "E85" means a petroleum product that is a  
16 blend of agriculturally derived denatured ethanol and gasoline  
17 or natural gasoline that typically contains 85 percent ethanol  
18 by volume, but at a minimum must contain 60 percent ethanol by  
19 volume. For the purposes of this chapter, the energy content of  
20 E85 will be considered to be 82,000 BTUs per gallon. E85  
21 produced for use as a motor fuel in alternative fuel vehicles as  
22 defined in subdivision 5 must comply with ASTM specification  
23 D5798-99 (2004).

24 Sec. 23. Minnesota Statutes 2004, section 296A.01,  
25 subdivision 20, is amended to read:

26 Subd. 20. [ETHANOL, DENATURED.] "Ethanol, denatured" means  
27 ethanol that is to be blended with gasoline, has been  
28 agriculturally derived, and complies with ASTM specification  
29 ~~D4806-01~~ D4806-04a. This includes the requirement that ethanol  
30 may be denatured only as specified in Code of Federal  
31 Regulations, title 27, parts 20 and 21.

32 Sec. 24. Minnesota Statutes 2004, section 296A.01,  
33 subdivision 22, is amended to read:

34 Subd. 22. [GAS TURBINE FUEL OIL.] "Gas turbine fuel oil"  
35 means fuel that contains mixtures of hydrocarbon oils free of  
36 inorganic acid and excessive amounts of solid or fibrous foreign

1 petroleum distillate, blend of petroleum distillates and  
2 residuals, or petroleum residual heating fuel that meets the  
3 specifications in ASTM specification ~~D396-01~~ D396-02a.

4 Sec. 29. Minnesota Statutes 2004, section 296A.01,  
5 subdivision 28, is amended to read:

6 Subd. 28. [KEROSENE.] "Kerosene" means a refined petroleum  
7 distillate consisting of a homogeneous mixture of hydrocarbons  
8 essentially free of water, inorganic acidic and basic compounds,  
9 and excessive amounts of particulate contaminants and that meets  
10 the specifications in ASTM specification ~~D3699-01~~ D3699-03.

11 Sec. 30. [INSTRUCTION TO REVISOR.]

12 The revisor of statutes shall renumber Minnesota Statutes,  
13 section 239.05, as section 239.051, alphabetize the definitions,  
14 and correct any cross-references to that section accordingly.

15 Sec. 31. [REPEALER.]

16 Minnesota Statutes 2004, section 239.05, subdivisions 6a  
17 and 6b, are repealed.

APPENDIX  
Repealed Minnesota Statutes for 05-0320

**239.05 DEFINITIONS.**

Subd. 6a. **Carbon monoxide control area.** "Carbon monoxide control area" means a geographic area designated as an oxygenated gasoline carbon monoxide control area by the United States Environmental Protection Agency.

Subd. 6b. **Carbon monoxide control period.** "Carbon monoxide control period" means a period of months designated as a carbon monoxide control period by the United States Environmental Protection Agency.

1 Senator Scheid from the Committee on Commerce, to which was  
2 referred

3 S.F. No. 2010: A bill for an act relating to weights and  
4 measures; updating standards and making other technical changes  
5 to weights and measures provisions; delaying repeal of petroleum  
6 tank release cleanup provisions; authorizing Petroleum Tank  
7 Release Compensation Board to adopt rules for consultant  
8 services; amending Minnesota Statutes 2004, sections 41A.09,  
9 subdivision 2a; 115C.07, subdivision 3; 115C.13; 239.011,  
10 subdivision 2; 239.05, subdivision 10b, by adding a subdivision;  
11 239.09; 239.75, subdivisions 1, 5; 239.761; 239.77, by adding a  
12 subdivision; 239.79, subdivision 4; 239.791, subdivisions 1, 7,  
13 8, 15; 239.792; 296A.01, subdivisions 2, 7, 8, 14, 19, 20, 22,  
14 23, 24, 25, 26, 28; repealing Minnesota Statutes 2004, section  
15 239.05, subdivisions 6a, 6b.

16 Reports the same back with the recommendation that the bill  
17 be amended as follows:

18 Page 2, delete section 3

19 Page 11, line 5, delete "June 1, 2006" and insert "December  
20 31, 2005"

21 Page 17, line 9, delete "June 1, 2006" and insert "December  
22 31, 2005"

23 Renumber the sections in sequence

24 Amend the title as follows:

25 Page 1, lines 4 and 5, delete "delaying repeal of petroleum  
26 tank release cleanup provisions;"

27 Page 1, line 9, delete "115C.13;"

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

30  
31 *Amida Scheid*  
32 .....  
(Committee Chair)

33  
34 April 11, 2005.....  
35 (Date of Committee recommendation)

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and Fiscal Analysis**

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**Senate**  

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**State of Minnesota**

**S.F. No. 1782 - Service Contracts (SCS1782A-1 delete-everything amendment)**

**Author:** Senator Dan Sparks  
**Prepared by:** Christopher B. Stang, <sup>CRS</sup> Senate Counsel (651/296-0539)  
**Date:** April 7, 2005

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**Section 1** exempts from this bill warranties, maintenance agreements, any similar type of product sold by public utilities or their affiliates, service contracts sold to persons other than consumers, service contracts on personal property purchased for \$250 or less, and motor vehicle service contracts. Provides that the exempt products are not subject to the insurance laws, unless otherwise specifically provided by law.

**Section 2** provides definitions used in the bill.

**Section 3** establishes requirements for transacting service contract business.

**Subdivision 1** permits a seller of a service contract to appoint a person to administer it.

**Subdivision 2** requires a service contract provider (hereafter "SCPs") to give customers proof of purchase and a copy of the contract.

**Subdivision 3** requires SCPs to register with the commissioner of commerce. Sets an annual registration fee of \$200.

**Subdivision 4** requires SCPs to meet financial solvency requirements by either insuring its contracts, maintaining a funded reserve account monitored by the commissioner, or maintain net worth of at least \$100 million.

**Subdivision 5** specifies a 20-day right to return a service contract for a full refund.

**Subdivision 6** exempts service contract revenues from insurance premium tax. Clarifies that premiums paid by SCPs for insurance are taxable.

**Subdivision 7** exempts SCPs and related businesses from state licensure, except for registration under this section.

**Subdivision 8** exempts SCPs and related entities from the insurance laws of this state, except for section 12 of this bill.

**Section 4** specifies the obligation required of a reimbursement insurance policy used to satisfy the financial solvency requirement. Requires the insurance policy to permit the customer to claim directly against the insurance company if the SCP does not respond within 60 days to a proof of loss.

**Section 5** establishes disclosure requirements for service contracts.

**Subdivision 1** requires service contracts to be readable and make the disclosures required in this section.

**Subdivision 2** requires the contract to name the SCP, the administrator, the seller, and the service contract holder.

**Subdivision 3** requires the service contract to state its total price and the terms upon which it was sold.

**Subdivision 4** requires service contracts to state any deductible.

**Subdivision 5** requires a service contract to state what is covered and what is not.

**Subdivision 6** requires the service contract to state any restriction on the ability of the purchaser to transfer it to someone else.

**Subdivision 7** requires a service contract to state what permits either side to cancel the service contract and to include the notification requirements.

**Subdivision 8** requires the service contract to state any duties of the contract holder.

**Subdivision 9** permits service contracts to exclude coverage for consequential damages and preexisting conditions.

**Section 6** requires an insured service contract to say so and identify the insurer. Requires an uninsured service contract to say that it is backed by the full faith and credit of the provider.

**Section 7** prohibits an SCP from using a deceptive name or making a misleading statement. Prohibits anyone, such as a lender, seller, or manufacturer of a product from requiring purchase of a service contract.

**Section 8** requires SCPs to keep records related to their service contracts and claims made under the contracts. Record retention period of three years specified. Records authorized to be kept on computer disk.

**Section 9** permits an insurer to terminate a reimbursement insurance policy issued to an SCP only with 30 days advance notice to the commissioner.

**Section 10** provides that insurers are deemed to have received premiums upon purchase of a service contract by a consumer. Permits insurers to seek reimbursement from SCPs for claims paid that were the SCP's obligation.

**Section 11** makes the provisions of this bill severable.

**Section 12** specifies unfair claims settlement practices by SCPs and their administrators that violate the unfair insurance trade practices act.

**Section 13** makes this bill effective January 1, 2006. Includes a transition provision.

CBS:cs

Senators Sparks, Scheid and Michel introduced--

S.F. No. 1782: Referred to the Committee on Commerce.

4

1                                   A bill for an act  
2           relating to commerce; regulating service contracts and  
3           contract providers; providing exceptions; proposing  
4           coding for new law as Minnesota Statutes, chapter 59B.  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
6           Section 1. [59B.01] [SCOPE AND PURPOSE.]  
7           (a) The purpose of this chapter is to create a legal  
8           framework within which service contracts may be sold in this  
9           state.  
10           (b) The following are exempt from this chapter:  
11           (1) warranties;  
12           (2) maintenance agreements;  
13           (3) warranties, service contracts, or maintenance  
14           agreements offered by public utilities on transmission devices  
15           to the extent these devices are regulated by the Public  
16           Utilities Commission;  
17           (4) service contracts sold or offered for sale to persons  
18           other than consumers;  
19           (5) service contracts on tangible property where the  
20           tangible property for which the service contract is sold has a  
21           purchase price of \$350 or less exclusive of sales tax; and  
22           (6) motor vehicle service contracts as defined in section  
23           65B.29, subdivision 1, paragraph (1).  
24           (c) The types of agreements referred to in paragraph (b) do  
25           not have to comply with any provision of the insurance laws of

1 this state.

2 Sec. 2. [59B.02] [DEFINITIONS.]

3 Subdivision 1. [TERMS.] For the purposes of this chapter,  
4 the terms defined in this section have the meanings given them.

5 Subd. 2. [ADMINISTRATOR.] "Administrator" means the person  
6 who is responsible for the administration of the service  
7 contracts or the service contracts plan or who is responsible  
8 for any filings required by this chapter.

9 Subd. 3. [COMMISSIONER.] "Commissioner" means the  
10 commissioner of commerce.

11 Subd. 4. [CONSUMER.] "Consumer" means a natural person who  
12 buys, other than for purposes of resale, any tangible personal  
13 property that is distributed in commerce and that is normally  
14 used for personal, family, or household purposes and not for  
15 business or research purposes.

16 Subd. 5. [MAINTENANCE AGREEMENT.] "Maintenance agreement"  
17 means a contract of limited duration that provides for scheduled  
18 maintenance only.

19 Subd. 6. [PERSON.] "Person" means an individual,  
20 partnership, corporation, incorporated or unincorporated  
21 association, joint stock company, reciprocal, syndicate, or any  
22 similar entity or combination of entities acting in concert.

23 Subd. 7. [PREMIUM.] "Premium" means the consideration paid  
24 to an insurer for a reimbursement insurance policy.

25 Subd. 8. [PROVIDER.] "Provider" means a person who is  
26 contractually obligated to the service contract holder under the  
27 terms of the service contract.

28 Subd. 9. [PROVIDER FEE.] "Provider fee" means the  
29 consideration paid for a service contract.

30 Subd. 10. [REIMBURSEMENT INSURANCE POLICY.] "Reimbursement  
31 insurance policy" means a policy of insurance issued to a  
32 provider to either provide reimbursement to the provider under  
33 the terms of the insured service contracts issued or sold by the  
34 provider or, in the event of the provider's nonperformance, to  
35 pay on behalf of the provider all covered contractual  
36 obligations incurred by the provider under the terms of the

1 insured service contracts issued or sold by the provider.

2 Subd. 11. [SERVICE CONTRACT.] "Service contract" means a  
3 contract or agreement for a separately stated consideration for  
4 a specific duration to perform the repair, replacement, or  
5 maintenance of property or indemnification for repair,  
6 replacement, or maintenance, for the operational or structural  
7 failure due to a defect in materials, workmanship, or normal  
8 wear and tear, with or without additional provisions for  
9 incidental payment of indemnity under limited circumstances.  
10 Service contracts may provide for the repair, replacement, or  
11 maintenance of property for damage resulting from power surges  
12 and accidental damage from handling.

13 Subd. 12. [SERVICE CONTRACT HOLDER OR CONTRACT  
14 HOLDER.] "Service contract holder" or "contract holder" means a  
15 person who is the purchaser or holder of a service contract.

16 Subd. 13. [WARRANTY.] "Warranty" means a warranty made  
17 solely by the manufacturer, importer, or seller of property or  
18 services without consideration, that is not negotiated or  
19 separated from the sale of the product, and is incidental to the  
20 sale of the product, that guarantees indemnity for defective  
21 parts, mechanical or electrical breakdown, labor, or other  
22 remedial measures, such as repair or replacement of the property  
23 or repetition of services.

24 Sec. 3. [59B.03] [REQUIREMENTS FOR TRANSACTING BUSINESS.]

25 Subdivision 1. [APPOINTMENT OF ADMINISTRATOR.] A provider  
26 may, but is not required to, appoint an administrator or other  
27 designee to be responsible for any or all of the administration  
28 of service contracts and compliance with this chapter.

29 Subd. 2. [CONTRACT COPIES AND RECEIPTS.] Service contracts  
30 must not be issued, sold, or offered for sale in this state  
31 unless the provider has:

32 (1) provided a receipt for, or other written evidence of,  
33 the purchase of the service contract to the contract holder; and

34 (2) provided a copy of the service contract to the service  
35 contract holder within a reasonable period of time from the date  
36 of purchase.

1        Subd. 3. [REGISTRATION.] Each provider of service  
2 contracts sold in this state shall file a registration with the  
3 commissioner on a form prescribed by the commissioner. Each  
4 provider shall pay to the commissioner a fee in the amount of  
5 \$200 annually.

6        Subd. 4. [FINANCIAL REQUIREMENTS.] (a) In order to ensure  
7 the faithful performance of a provider's obligations to its  
8 contract holders, each provider is responsible for complying  
9 with the requirements of one of the following:

10        (1) insure all service contracts under a reimbursement  
11 insurance policy issued by an insurer authorized to transact  
12 insurance in this state, a risk retention group, as that term is  
13 defined in United States Code, title 15, section 3901(A)(4), as  
14 long as that risk retention group is in full compliance with the  
15 federal Liability Risk Retention Act of 1986, United States  
16 Code, title 15, section 3901, et al., or issued pursuant to  
17 sections 60A.195 to 60A.209, and either:

18        (i) the insurer or risk retention group shall, at the time  
19 the policy is filed with the commissioner, and continuously  
20 thereafter, be rated "B++" or better by A.M. Best Company, Inc.,  
21 maintain surplus as to policyholders and paid-in capital of at  
22 least \$15,000,000, and annually file audited financial  
23 statements with the commissioner; or

24        (ii) the commissioner may authorize an insurer or risk  
25 retention group that has surplus as to policyholders and paid-in  
26 capital of less than \$15,000,000 but at least equal to  
27 \$10,000,000 to issue the insurance required by this section if  
28 the insurer or risk retention group demonstrates to the  
29 satisfaction of the commissioner that the company maintains a  
30 ratio of direct written premiums, wherever written, to surplus  
31 as to policyholders and paid-in capital of not greater than 3 to  
32 1; or

33        (2)(i) maintain a funded reserve account for obligations  
34 under contracts issued and outstanding in this state. The  
35 reserves must not be less than 40 percent of gross consideration  
36 received, less claims paid, on the sale of the service contract

1 for all in-force contracts. The reserve account is subject to  
2 examination and review by the commissioner; and

3 (ii) place in trust with the commissioner a financial  
4 security deposit, having a value of not less than five percent  
5 of the gross consideration received, less claims paid, on the  
6 sale of the service contract for all service contracts issued  
7 and in force, but not less than \$25,000, consisting of one of  
8 the following:

9 (A) a surety bond issued by an authorized surety;

10 (B) securities of the type eligible for deposit by  
11 authorized insurers in this state;

12 (C) cash;

13 (D) a letter of credit issued by a qualified financial  
14 institution; or

15 (E) another form of security prescribed by rules of the  
16 commissioner; or

17 (3)(i) maintain, or its parent company maintain, a net  
18 worth or stockholders' equity of \$100,000,000; and

19 (ii) upon request, provide the commissioner with a copy of  
20 the provider's or the provider's parent company's most recent  
21 Form 10-K or Form 20-F filed with the Securities and Exchange  
22 Commission (SEC) within the last calendar year, or if the  
23 company does not file with the SEC, a copy of the company's  
24 audited financial statements, which shows a net worth of the  
25 provider or its parent company of at least \$100,000,000. If the  
26 provider's parent company's Form 10-K, Form 20-F, or audited  
27 financial statements are filed to meet the provider's financial  
28 stability requirement, then the parent company shall agree to  
29 guarantee the obligations of the provider relating to service  
30 contracts sold by the provider in this state.

31 (b) Except for the requirements specified in paragraph (a),  
32 no other financial security requirements may be required by the  
33 commissioner for service contract providers.

34 Subd. 5. [RIGHT OF RETURN.] Service contracts must require  
35 the provider to permit the service contract holder to return the  
36 service contract within 20 days of the date the service contract

1 was mailed to the service contract holder or within ten days of  
2 delivery if the service contract is delivered to the service  
3 contract holder at the time of sale or within a longer time  
4 period permitted under the service contract. Upon return of the  
5 service contract to the provider within the applicable time  
6 period, if no claim has been made under the service contract  
7 before its return to the provider, the service contract is void  
8 and the provider shall refund to the service contract holder, or  
9 credit the account of the service contract holder, with the full  
10 purchase price of the service contract. The right to void the  
11 service contract provided in this paragraph is not transferable  
12 and applies only to the original service contract purchaser, and  
13 only if no claim has been made before its return to the  
14 provider. A ten percent penalty per month must be added to a  
15 refund that is not paid or credited within 45 days after return  
16 of the service contract to the provider.

17 Subd. 6. [PREMIUM TAXES.] (a) Provider fees collected on  
18 service contracts are not subject to premium taxes.

19 (b) Premiums for reimbursement insurance policies are  
20 subject to applicable taxes.

21 Subd. 7. [LICENSING EXEMPTION.] Except for the  
22 registration requirements in subdivision 3, providers and  
23 related service contract sellers, administrators, and other  
24 persons marketing, selling, or offering to sell service  
25 contracts are exempt from any licensing requirements of this  
26 state.

27 Subd. 8. [INSURANCE EXEMPTION.] The marketing, sale,  
28 offering for sale, issuance, making, proposing to make, and  
29 administration of service contracts by providers and related  
30 service contract sellers, administrators, and other persons are  
31 exempt from all other provisions of the insurance laws of this  
32 state.

33 Sec. 4. [59B.04] [REQUIRED DISCLOSURES; REIMBURSEMENT  
34 INSURANCE POLICY.]

35 Subdivision 1. [RIGHT TO PAYMENT OR  
36 REIMBURSEMENT.] Reimbursement insurance policies insuring

1 service contracts issued, sold, or offered for sale in this  
2 state shall state that the insurer that issued the reimbursement  
3 insurance policy shall either reimburse or pay on behalf of the  
4 provider any covered sums the provider is legally obligated to  
5 pay or, in the event of the provider's nonperformance, shall  
6 provide the service which the provider is legally obligated to  
7 perform according to the provider's contractual obligations  
8 under the service contracts issued or sold by the provider.

9 Subd. 2. [RIGHT TO APPLY TO COMPANY.] In the event covered  
10 service is not provided by the service contract provider within  
11 60 days of proof of loss by the service contract holder, the  
12 contract holder is entitled to apply directly to the  
13 reimbursement insurance company.

14 Sec. 5. [59B.05] [REQUIRED DISCLOSURE; SERVICE CONTRACTS.]

15 Subdivision 1. [READABILITY AND GENERAL  
16 DISCLOSURE.] Service contracts marketed, sold, offered for sale,  
17 issued, made, proposed to be made, or administered in this state  
18 must be written, printed, or typed in clear, understandable  
19 language that is easy to read and must disclose the requirements  
20 set forth in this section, as applicable.

21 Subd. 2. [IDENTITIES OF PARTIES.] Service contracts must  
22 state the name and address of the provider, and must identify  
23 any administrator if different from the provider, the service  
24 contract seller, and the service contract holder to the extent  
25 that the name of the service contract holder has been furnished  
26 by the service contract holder. The identities of the parties  
27 are not required to be preprinted on the service contract and  
28 may be added to the service contract at the time of sale.

29 Subd. 3. [TOTAL PURCHASE PRICE AND SALES TERMS.] Service  
30 contracts must state the total purchase price and the terms  
31 under which the service contract is sold. The purchase price is  
32 not required to be preprinted on the service contract and may be  
33 negotiated at the time of sale with the service contract holder.

34 Subd. 4. [DEDUCTIBLES.] Service contracts must state the  
35 existence of any deductible amount, if applicable.

36 Subd. 5. [COVERAGES, LIMITATIONS, AND EXCLUSIONS.] No

1       Sec. 8. [59B.08] [RECORD-KEEPING REQUIREMENTS.]

2       Subdivision 1. [GENERALLY.] The provider shall keep  
3 accurate accounts, books, and records concerning transactions  
4 regulated under this chapter.

5       The provider's accounts, books, and records include the  
6 following:

7       (1) copies of each type of service contracts sold;

8       (2) the name and address of each service contract holder to  
9 the extent that the name and address have been furnished by the  
10 service contract holder;

11       (3) a list of the locations where service contracts are  
12 marketed, sold, or offered for sale; and

13       (4) written claims files which shall contain at least the  
14 dates and description of claims related to the service contracts.

15       Subd. 2. [RETENTION.] (a) Except as provided in paragraph  
16 (b), the provider shall retain all records required to be  
17 maintained by this section for at least one year after the  
18 specified period of coverage has expired.

19       (b) A provider discontinuing business in this state shall  
20 maintain its records until it furnishes the commissioner  
21 satisfactory proof that it has discharged all obligations to  
22 contract holders in this state.

23       Subd. 3. [MEDIUM.] The records required by this chapter  
24 may be, but are not required to be, maintained on a computer  
25 disk or other record-keeping technology. If the records are  
26 maintained in other than hard copy, the records must be capable  
27 of duplication to legible hard copy at the request of the  
28 commissioner.

29       Sec. 9. [59B.09] [CANCELLATION OF REIMBURSEMENT INSURANCE  
30 POLICY.]

31       An insurer that issued a reimbursement insurance policy may  
32 not terminate the policy unless the insurer mails or delivers  
33 written notice of the termination to the commissioner at least  
34 30 days before the effective date of termination. The  
35 termination of a reimbursement insurance policy does not reduce  
36 the issuer's responsibility for service contracts issued by

1 providers before the date of the termination.

2       Sec. 10. [59B.10] [OBLIGATION OF REIMBURSEMENT INSURANCE  
3 POLICY INSURERS.]

4       Insurers issuing reimbursement insurance to providers are  
5 deemed to have received the premiums for the insurance upon the  
6 payment of provider fees by consumers for service contracts  
7 issued by the insured providers.

8       Nothing in this chapter prevents or limits the right of an  
9 insurer which issued a reimbursement insurance policy to seek  
10 indemnification or subrogation against a provider if the issuer  
11 pays or is obligated to pay the service contract holder sums  
12 that the provider was obligated to pay pursuant to the  
13 provisions of the service contract.

14       Sec. 11. [59B.11] [SEPARABILITY PROVISION.]

15       If any provision of this chapter or the application of the  
16 provision to any person or circumstances are held invalid, the  
17 remainder of this chapter and the application of the provision  
18 to person or circumstances other than those as to which it is  
19 held invalid, must not be affected.

20       Sec. 12. [EFFECTIVE DATE.]

21       Sections 1 to 11 are effective January 1, 2006, and apply  
22 to service contracts issued on or after that date. A provider  
23 transacting business in this state on or before the date of the  
24 enactment of this chapter, which submits an application for  
25 registration as a provider under Minnesota Statutes, section  
26 59B.03, subdivision 3, within 30 days after the commissioner  
27 makes the application available, may continue to transact  
28 business in this state until final agency action is taken by the  
29 commissioner regarding the registration application and all  
30 rights to administrative and judicial review related to that  
31 final agency action have been exhausted or have expired.

*Pagemiller*

1 Senator . . . moves to amend S.F. No. 1782 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [59B.01] [SCOPE AND PURPOSE.]

4 (a) The purpose of this chapter is to create a legal  
5 framework within which service contracts may be sold in this  
6 state.

7 (b) The following are exempt from this chapter:

8 (1) warranties;

9 (2) maintenance agreements;

10 (3) warranties, service contracts, or maintenance  
11 agreements offered by public utilities, as defined in section  
12 216B.02, subdivision 4, or an entity or operating unit owned by  
13 or under common control with a public utility;

14 (4) service contracts sold or offered for sale to persons  
15 other than consumers;

16 (5) service contracts on tangible property where the  
17 tangible property for which the service contract is sold has a  
18 purchase price of \$250 or less exclusive of sales tax; and

19 (6) motor vehicle service contracts as defined in section  
20 65B.29, subdivision 1, paragraph (1).

21 (c) The types of agreements referred to in paragraph (b)  
22 are not subject to chapters 60A to 79A, except as otherwise  
23 specifically provided by law.

24 Sec. 2. [59B.02] [DEFINITIONS.]

25 Subdivision 1. [TERMS.] For the purposes of this chapter,  
26 the terms defined in this section have the meanings given them.

27 Subd. 2. [ADMINISTRATOR.] "Administrator" means the person  
28 who is responsible for the administration of the service  
29 contracts or the service contracts plan or who is responsible  
30 for any filings required by this chapter.

31 Subd. 3. [COMMISSIONER.] "Commissioner" means the  
32 commissioner of commerce.

33 Subd. 4. [CONSUMER.] "Consumer" means a natural person who  
34 buys, other than for purposes of resale, any tangible personal  
35 property that is distributed in commerce and that is normally  
36 used for personal, family, or household purposes and not for

1 business or research purposes.

2 Subd. 5. [MAINTENANCE AGREEMENT.] "Maintenance agreement"  
3 means a contract of limited duration that provides for scheduled  
4 maintenance only.

5 Subd. 6. [PERSON.] "Person" means an individual,  
6 partnership, corporation, incorporated or unincorporated  
7 association, joint stock company, reciprocal, syndicate, or any  
8 similar entity or combination of entities acting in concert.

9 Subd. 7. [PREMIUM.] "Premium" means the consideration paid  
10 to an insurer for a reimbursement insurance policy.

11 Subd. 8. [PROVIDER.] "Provider" means a person who is  
12 contractually obligated to the service contract holder under the  
13 terms of the service contract.

14 Subd. 9. [PROVIDER FEE.] "Provider fee" means the  
15 consideration paid for a service contract.

16 Subd. 10. [REIMBURSEMENT INSURANCE POLICY.] "Reimbursement  
17 insurance policy" means a policy of insurance issued to a  
18 provider to either provide reimbursement to the provider under  
19 the terms of the insured service contracts issued or sold by the  
20 provider or, in the event of the provider's nonperformance, to  
21 pay on behalf of the provider all covered contractual  
22 obligations incurred by the provider under the terms of the  
23 insured service contracts issued or sold by the provider.

24 Subd. 11. [SERVICE CONTRACT.] "Service contract" means a  
25 contract or agreement for a separately stated consideration for  
26 a specific duration to perform the repair, replacement, or  
27 maintenance of property or indemnification for repair,  
28 replacement, or maintenance, for the operational or structural  
29 failure due to a defect in materials, workmanship, or normal  
30 wear and tear, with or without additional provisions for  
31 incidental payment of indemnity under limited circumstances.  
32 Service contracts may provide for the repair, replacement, or  
33 maintenance of property for damage resulting from power surges  
34 and accidental damage from handling.

35 Subd. 12. [SERVICE CONTRACT HOLDER OR CONTRACT  
36 HOLDER.] "Service contract holder" or "contract holder" means a

1 person who is the purchaser or holder of a service contract.

2 Subd. 13. [WARRANTY.] "Warranty" means a warranty made  
3 solely by the manufacturer, importer, or seller of property or  
4 services without consideration, that is not negotiated or  
5 separated from the sale of the product, and is incidental to the  
6 sale of the product, that guarantees indemnity for defective  
7 parts, mechanical or electrical breakdown, labor, or other  
8 remedial measures, such as repair or replacement of the property  
9 or repetition of services.

10 Sec. 3. [59B.03] [REQUIREMENTS FOR TRANSACTING BUSINESS.]

11 Subdivision 1. [APPOINTMENT OF ADMINISTRATOR.] A provider  
12 may, but is not required to, appoint an administrator or other  
13 designee to be responsible for any or all of the administration  
14 of service contracts and compliance with this chapter.

15 Subd. 2. [CONTRACT COPIES AND RECEIPTS.] Service contracts  
16 must not be issued, sold, or offered for sale in this state  
17 unless the provider has:

18 (1) provided a receipt for, or other written evidence of,  
19 the purchase of the service contract to the contract holder;

20 (2) provided a copy of the service contract to the service  
21 contract holder within a reasonable period of time from the date  
22 of purchase; and

23 (3) complied with this chapter.

24 Subd. 3. [REGISTRATION.] Each provider of service  
25 contracts sold in this state shall file a registration with the  
26 commissioner on a form prescribed by the commissioner. Each  
27 provider shall pay to the commissioner a fee in the amount of  
28 \$200 annually.

29 Subd. 4. [FINANCIAL REQUIREMENTS.] In order to ensure the  
30 faithful performance of a provider's obligations to its contract  
31 holders, each provider is responsible for complying with the  
32 requirements of one of the following:

33 (1) insure all service contracts under a reimbursement  
34 insurance policy issued by an insurer authorized to transact  
35 insurance in this state, a risk retention group, as that term is  
36 defined in United States Code, title 15, section 3901(A)(4), as

1 long as that risk retention group is registered pursuant to  
2 section 60E.03 or 60E.04 as applicable, and is in full  
3 compliance with the federal Liability Risk Retention Act of  
4 1986, United States Code, title 15, section 3901, et al., or  
5 issued pursuant to sections 60A.195 to 60A.209, and either:

6 (i) the insurer or risk retention group shall, at the time  
7 the policy is filed with the commissioner, and continuously  
8 thereafter, maintain surplus as to policyholders and paid-in  
9 capital of at least \$15,000,000, and annually file audited  
10 financial statements with the commissioner; or

11 (ii) the commissioner may authorize an insurer or risk  
12 retention group that has surplus as to policyholders and paid-in  
13 capital of less than \$15,000,000 but at least equal to  
14 \$10,000,000 to issue the insurance required by this section if  
15 the insurer or risk retention group demonstrates to the  
16 satisfaction of the commissioner that the company maintains a  
17 ratio of direct written premiums, wherever written, to surplus  
18 as to policyholders and paid-in capital of not greater than 3 to  
19 1; or

20 (2)(i) maintain a funded reserve account for obligations  
21 under contracts issued and outstanding in this state. The  
22 reserves must not be less than 40 percent of gross consideration  
23 received, less claims paid, on the sale of the service contract  
24 for all in-force contracts. The reserve account is subject to  
25 examination and review by the commissioner; and

26 (ii) place in trust with the commissioner a financial  
27 security deposit, having a value of not less than five percent  
28 of the gross consideration received, less claims paid, on the  
29 sale of the service contract for all service contracts issued  
30 and in force, but not less than \$25,000, consisting of one of  
31 the following:

32 (A) a surety bond issued by an authorized surety;

33 (B) securities of the type eligible for deposit by  
34 authorized insurers in this state;

35 (C) cash;

36 (D) a letter of credit issued by a qualified financial

1 institution containing an evergreen clause which prevents the  
2 expiration of the letter without due notice from the issuer; or

3 (E) another form of security prescribed by rules of the  
4 commissioner; or

5 (3)(i) maintain, or its parent company maintain, a net  
6 worth or stockholders' equity of \$100,000,000; and

7 (ii) upon request, provide the commissioner with a copy of  
8 the provider's or the provider's parent company's most recent  
9 Form 10-K or Form 20-F filed with the Securities and Exchange  
10 Commission (SEC) within the last calendar year, or if the  
11 company does not file with the SEC, a copy of the company's  
12 audited financial statements, which shows a net worth of the  
13 provider or its parent company of at least \$100,000,000. If the  
14 provider's parent company's Form 10-K, Form 20-F, or audited  
15 financial statements are filed to meet the provider's financial  
16 stability requirement, then the parent company shall agree to  
17 guarantee the obligations of the provider relating to service  
18 contracts sold by the provider in this state.

19 Subd. 5. [RIGHT OF RETURN.] Service contracts must require  
20 the provider to permit the service contract holder to return the  
21 service contract within 20 days of the date the service contract  
22 was mailed to the service contract holder or within ten days of  
23 delivery if the service contract is delivered to the service  
24 contract holder at the time of sale or within a longer time  
25 period permitted under the service contract. Upon return of the  
26 service contract to the provider within the applicable time  
27 period, if no claim has been made under the service contract  
28 before its return to the provider, the service contract is void  
29 and the provider shall refund to the service contract holder, or  
30 credit the account of the service contract holder, with the full  
31 purchase price of the service contract. The right to void the  
32 service contract provided in this paragraph is not transferable  
33 and applies only to the original service contract purchaser, and  
34 only if no claim has been made before its return to the  
35 provider. A ten percent penalty per month must be added to a  
36 refund that is not paid or credited within 45 days after return

1 of the service contract to the provider.

2 Subd. 6. [PREMIUM TAXES.] (a) Provider fees collected on  
3 service contracts are not subject to premium taxes.

4 (b) Premiums for reimbursement insurance policies are  
5 subject to applicable taxes.

6 Subd. 7. [LICENSING EXEMPTION.] Except for the  
7 registration requirements in subdivision 3, providers and  
8 related service contract sellers, administrators, and other  
9 persons marketing, selling, or offering to sell service  
10 contracts are exempt from any licensing requirements of this  
11 state.

12 Subd. 8. [INSURANCE EXEMPTION.] The marketing, sale,  
13 offering for sale, issuance, making, proposing to make, and  
14 administration of service contracts by providers and related  
15 service contract sellers, administrators, and other persons are  
16 exempt from all other provisions of the insurance laws of this  
17 state, except as provided in section 72A.20, subdivision 38.

18 Sec. 4. [59B.04] [REQUIRED DISCLOSURES; REIMBURSEMENT  
19 INSURANCE POLICY.]

20 Subdivision 1. [RIGHT TO PAYMENT OR  
21 REIMBURSEMENT.] Reimbursement insurance policies insuring  
22 service contracts issued, sold, or offered for sale in this  
23 state shall state that the insurer that issued the reimbursement  
24 insurance policy shall either reimburse or pay on behalf of the  
25 provider any covered sums the provider is legally obligated to  
26 pay or, in the event of the provider's nonperformance, shall  
27 provide the service which the provider is legally obligated to  
28 perform according to the provider's contractual obligations  
29 under the service contracts issued or sold by the provider.

30 Subd. 2. [RIGHT TO APPLY TO COMPANY.] In the event covered  
31 service is not provided by the service contract provider within  
32 60 days of proof of loss by the service contract holder, the  
33 contract holder is entitled to apply directly to the  
34 reimbursement insurance company.

35 Sec. 5. [59B.05] [REQUIRED DISCLOSURE; SERVICE CONTRACTS.]

36 Subdivision 1. [READABILITY AND GENERAL

1 DISCLOSURE.] Service contracts marketed, sold, offered for sale,  
2 issued, made, proposed to be made, or administered in this state  
3 must be written, printed, or typed in clear, understandable  
4 language that is easy to read and must disclose the requirements  
5 set forth in this section, as applicable.

6 Subd. 2. [IDENTITIES OF PARTIES.] Service contracts must  
7 state the name and address of the provider, and must identify  
8 any administrator if different from the provider, the service  
9 contract seller, and the service contract holder to the extent  
10 that the name of the service contract holder has been furnished  
11 by the service contract holder. The identities of the parties  
12 are not required to be preprinted on the service contract and  
13 may be added to the service contract at the time of sale.

14 Subd. 3. [TOTAL PURCHASE PRICE AND SALES TERMS.] Service  
15 contracts must state the total purchase price and the terms  
16 under which the service contract is sold. The purchase price is  
17 not required to be preprinted on the service contract and may be  
18 negotiated at the time of sale with the service contract holder.

19 Subd. 4. [DEDUCTIBLES.] Service contracts must state the  
20 existence of any deductible amount, if applicable.

21 Subd. 5. [COVERAGES, LIMITATIONS, AND EXCLUSIONS.] No  
22 particular causes of loss or property are required to be  
23 covered, but service contracts must specify the merchandise and  
24 services to be provided and, with equal prominence, any  
25 limitations, exceptions, or exclusions including, but not  
26 limited to, any damage or breakdown not covered by the service  
27 contract.

28 Subd. 6. [RESTRICTIONS ON TRANSFERABILITY.] Service  
29 contracts must state any restrictions governing the  
30 transferability of the service contract, if applicable.

31 Subd. 7. [CANCELLATION TERMS.] Service contracts must  
32 state the terms, restrictions, or conditions governing  
33 cancellation of the service contract prior to the termination or  
34 expiration date of the service contract by either the provider  
35 or the service contract holder. The provider of the service  
36 contract shall mail a written notice to the contract holder at

1 the last known address of the service contract holder contained  
2 in the records of the provider at least 15 days before  
3 cancellation by the provider. Five days' notice is required if  
4 the reason for cancellation is nonpayment of the provider fee, a  
5 material misrepresentation by the service contract holder to the  
6 provider, or a substantial breach of duties by the service  
7 contract holder relating to the covered product or its use. The  
8 notice must state the effective date of the cancellation and the  
9 reason for the cancellation.

10 Subd. 8. [DUTIES OF CONTRACT HOLDER.] Service contracts  
11 must set forth all of the obligations and duties of the service  
12 contract holder, such as the duty to protect against any further  
13 damage and any requirement to follow the owner's manual.

14 Subd. 9. [EXCLUSIONS; CONSEQUENTIAL DAMAGES AND  
15 PREEXISTING CONDITIONS.] Service contracts may exclude coverage  
16 for consequential damages or preexisting conditions. These  
17 exclusions, if applicable, must be stated in the contract.

18 Sec. 6. [59B.06] [ADDITIONAL REQUIRED DISCLOSURE; SERVICE  
19 CONTRACTS.]

20 Subdivision 1. [INSURANCE DISCLOSURE.] Service contracts  
21 insured under a reimbursement insurance policy pursuant to  
22 section 59B.03, subdivision 4, clause (1), must contain a  
23 statement in substantially the following form: "Obligations of  
24 the provider under this service contract are insured under a  
25 service contract reimbursement insurance policy." The service  
26 contract must also state the name and address of the insurer.

27 Subd. 2. [DISCLOSURE OF NO INSURANCE.] Service contracts  
28 not insured under a reimbursement insurance policy pursuant to  
29 section 59B.03, subdivision 4, clause (1), must contain a  
30 statement in substantially the following form: "Obligations of  
31 the provider under this service contract are backed by the full  
32 faith and credit of the provider."

33 Sec. 7. [59B.07] [PROHIBITED ACTS.]

34 Subdivision 1. [DECEPTIVE NAMES.] A provider shall not use  
35 in its name the words insurance, casualty, surety, mutual, or  
36 any other words descriptive of the insurance, casualty, or

1 surety business; or a name deceptively similar to the name or  
2 description of any insurance or surety corporation, or to the  
3 name of any other provider. The word "guaranty" or similar word  
4 may be used by a provider. This section does not apply to a  
5 company that was using any of the prohibited language in its  
6 name before the effective date of this chapter. However, a  
7 company using the prohibited language in its name shall include  
8 in its service contracts a statement in substantially the  
9 following form: "This agreement is not an insurance contract."

10 Subd. 2. [FALSE OR MISLEADING STATEMENTS.] A provider or  
11 its representative shall not in its service contracts,  
12 literature, or otherwise make, permit, or cause to be made any  
13 false or misleading statement or omit any material statement  
14 that would be considered misleading if omitted.

15 Subd. 3. [REQUIRED PURCHASE.] A person, such as a bank,  
16 savings association, lending institution, manufacturer, or  
17 seller of any product shall not require the purchase of a  
18 service contract as a condition of a loan or a condition for the  
19 sale of any property.

20 Sec. 8. [59B.08] [RECORD-KEEPING REQUIREMENTS.]

21 Subdivision 1. [GENERALLY.] The provider shall keep  
22 accurate accounts, books, and records concerning transactions  
23 regulated under this chapter.

24 The provider's accounts, books, and records include the  
25 following:

26 (1) copies of each type of service contracts sold;

27 (2) the name and address of each service contract holder to  
28 the extent that the name and address have been furnished by the  
29 service contract holder;

30 (3) a list of the locations where service contracts are  
31 marketed, sold, or offered for sale; and

32 (4) written claims files which shall contain information  
33 regarding the services provided or claims payments for contracts  
34 that provide for payments or reimbursement, including at least  
35 the dates and description of claims related to the service  
36 contracts.

1        Subd. 2. [RETENTION.] (a) Except as provided in paragraph  
2 (b), the provider shall retain all records required to be  
3 maintained by this section for at least three years after the  
4 specified period of coverage has expired.

5        (b) A provider discontinuing business in this state shall  
6 maintain its records until it furnishes the commissioner  
7 satisfactory proof that it has discharged all obligations to  
8 contract holders in this state.

9        Subd. 3. [MEDIUM.] The records required by this chapter  
10 may be, but are not required to be, maintained on a computer  
11 disk or other record-keeping technology. If the records are  
12 maintained in other than hard copy, the records must be capable  
13 of duplication to legible hard copy at the request of the  
14 commissioner.

15        Sec. 9. [59B.09] [TERMINATION OF REIMBURSEMENT INSURANCE  
16 POLICY.]

17        An insurer that issued a reimbursement insurance policy may  
18 not terminate the policy unless the insurer mails or delivers  
19 written notice of the termination to the commissioner at least  
20 30 days before the effective date of termination. The  
21 termination of a reimbursement insurance policy does not reduce  
22 the issuer's responsibility for service contracts issued by  
23 providers before the date of the termination.

24        Sec. 10. [59B.10] [OBLIGATION OF REIMBURSEMENT INSURANCE  
25 POLICY INSURERS.]

26        Insurers issuing reimbursement insurance to providers are  
27 deemed to have received the premiums for the insurance upon the  
28 payment of provider fees by consumers for service contracts  
29 issued by the insured providers.

30        Nothing in this chapter prevents or limits the right of an  
31 insurer which issued a reimbursement insurance policy to seek  
32 indemnification or subrogation against a provider if the issuer  
33 pays or is obligated to pay the service contract holder sums  
34 that the provider was obligated to pay pursuant to the  
35 provisions of the service contract.

36        Sec. 11. [59B.11] [SEVERABILITY PROVISION.]

1 If any provision of this chapter or the application of the  
2 provision to any person or circumstances are held invalid, the  
3 remainder of this chapter and the application of the provision  
4 to person or circumstances other than those as to which it is  
5 held invalid, must not be affected.

6 Sec. 12. Minnesota Statutes 2004, section 72A.20, is  
7 amended by adding a subdivision to read:

8 Subd. 38. [UNFAIR CLAIMS SERVICE; SERVICE CONTRACTS.] No  
9 person shall, in connection with a service contract regulated  
10 under chapter 59B:

11 (1) attempt to settle claims on the basis of an application  
12 or any other material document which was altered without notice  
13 to, or knowledge or consent of, the service contract holder;

14 (2) make a material misrepresentation to the service  
15 contract holder for the purpose and with the intent of effecting  
16 settlement of the claims, loss, or damage under the contract on  
17 less favorable terms than those provided in, and contemplated  
18 by, the contract; or

19 (3) commit or perform with such frequency as to indicate a  
20 general business practice any of the following practices:

21 (i) failure to properly investigate claims;

22 (ii) misrepresentation of pertinent facts or contract  
23 provisions relating to coverages at issue;

24 (iii) failure to acknowledge and act upon communications  
25 within a reasonable time with respect to claims;

26 (iv) denial of claims without conducting reasonable  
27 investigations based upon available information;

28 (v) failure to affirm or deny coverage of claims upon  
29 written request of the service contract holder within a  
30 reasonable time after proof-of-loss statements have been  
31 completed; or

32 (vi) failure to timely provide a reasonable explanation to  
33 the service contract holder of the basis in the contract in  
34 relation to the facts or applicable law for denial of a claim or  
35 for the offer of a compromise settlement.

36 Sec. 13. [EFFECTIVE DATE.]

1       Sections 1 to 12 are effective January 1, 2006, and apply  
2 to service contracts issued on or after that date. A provider  
3 transacting business in this state on or before the date of the  
4 enactment of this chapter, which submits an application for  
5 registration as a provider under Minnesota Statutes, section  
6 59B.03, subdivision 3, within 30 days after the commissioner  
7 makes the application available, may continue to transact  
8 business in this state until final agency action is taken by the  
9 commissioner regarding the registration application and all  
10 rights to administrative and judicial review related to that  
11 final agency action have been exhausted or have expired."

12       Delete the title and insert:

13       "A bill for an act relating to commerce; regulating service  
14 contracts and contract providers; providing exceptions; amending  
15 Minnesota Statutes 2004, section 72A.20, by adding a  
16 subdivision; proposing coding for new law as Minnesota Statutes,  
17 chapter 59B."

*Adopted 4-11-05*

1 Senator *Metzen* moves to amend the delete-everything  
2 amendment (SCS1782A-1) to S.F. No. 1782 as follows:

3 Page 1, line 18, delete "and"

4 Page 1, line 20, before the period, insert "; and

5 (7) service contracts for home security equipment installed

6 by a licensed technology systems contractor"

# Minnesota Service Contracts Act

## SF 1782

- Adoption of the proposed Minnesota Service Contracts Act (the “Act”) would provide Minnesotans with an array of important consumer protections, make Minnesota law consistent with other states and encourage service contract providers to offer their products to our residents thereby promoting competition for Minnesota consumer’s business.
- The proposed Act is based on legislation adopted by the National Association of Insurance Commissioners (NAIC) and provides a framework for regulation of service contracts to ensure meaningful consumer disclosure and the financial integrity of the industry that issues service contracts in the State of Minnesota.
- The Act requires anyone wishing to issue service contracts in the State of Minnesota to register with the Minnesota Department of Commerce and meet specific financial standards. To offer service contracts, providers must either maintain specified reserve amounts, purchase insurance which covers 100% of their outstanding service contract liabilities, or demonstrate a net worth of at least \$100 million. These financial stability requirements are stronger than those adopted by the NAIC.
- The legislation contains numerous consumer protections including:
  - allowing consumers to review their service contract after purchase and cancel within a minimum 20 day rescission period and receive a full refund of the purchase price;
  - requiring that service contracts clearly identify the service contract provider and any insurance company backing their contract; and
  - providing proof of purchase or a receipt identifying the product that is covered, the total purchase price of the service contract, the benefits and exclusions, deductible amounts, cancellation and transfer rights, and other disclosures intended to inform consumers of their rights under the service contract.
- According to the NAIC, a number of states, including New York and Texas, have adopted the model and several other states have enacted similar legislation such that approximately 21 states have enacted some variety of legislation comprehensively regulating service contracts. The balance of the states have enacted legislation either regulating only a specific category of service contracts or having enacted no legislation. Minnesota is one of approximately 14 states that only regulate a specific category of service contracts. Changes have been made from the model to reflect current industry practices and developments and to address drafting oversights which have become apparent during the initial implementation of the NAIC model in other states.

- The Act begins the process of building a regulatory framework and certainty for service contract programs that currently does not exist in Minnesota. The Act would create a level playing field and a minimum barrier to entry for service contract providers that wish to transact business in our state.
- The following is a summary of the key sections contained in the Act:
  - 1) definitions of terms;
  - 2) requirements for doing business;
  - 3) provider financial requirements;
  - 4) requirements for reimbursement insurance policy providers;
  - 5) contract disclosure requirements;
  - 6) defined program record keeping requirements
  - 7) prohibited practices; and
  - 8) enforcement provisions.
- The Act requires all service contract providers to register with the Department of Commerce, offer only service contracts that contain mandatory consumer disclosures, maintain specified records and comply with the investigation and examination powers of the Department of Commerce.
- Without this legislation, many service contract programs may not transact business in Minnesota and others may not be offering their full compliment of service contract programs to Minnesota consumers.
- The bill will be effective January 1, 2006.

**If you have any questions or comments or are in need of need of additional information, please contact Paul Cassidy of Leonard, Street and Deinard at 612-720-7261 or email at [paul.cassidy@leonard.com](mailto:paul.cassidy@leonard.com).**

1 Senator Scheid from the Committee on Commerce, to which was  
2 referred

3 S.F. No. 1782: A bill for an act relating to commerce;  
4 regulating service contracts and contract providers; providing  
5 exceptions; proposing coding for new law as Minnesota Statutes,  
6 chapter 59B.

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. [59B.01] [SCOPE AND PURPOSE.]

11 (a) The purpose of this chapter is to create a legal  
12 framework within which service contracts may be sold in this  
13 state.

14 (b) The following are exempt from this chapter:

15 (1) warranties;

16 (2) maintenance agreements;

17 (3) warranties, service contracts, or maintenance  
18 agreements offered by public utilities, as defined in section  
19 216B.02, subdivision 4, or an entity or operating unit owned by  
20 or under common control with a public utility;

21 (4) service contracts sold or offered for sale to persons  
22 other than consumers;

23 (5) service contracts on tangible property where the  
24 tangible property for which the service contract is sold has a  
25 purchase price of \$250 or less exclusive of sales tax;

26 (6) motor vehicle service contracts as defined in section  
27 65B.29, subdivision 1, paragraph (1); and

28 (7) service contracts for home security equipment installed  
29 by a licensed technology systems contractor.

30 (c) The types of agreements referred to in paragraph (b)  
31 are not subject to chapters 60A to 79A, except as otherwise  
32 specifically provided by law.

33 Sec. 2. [59B.02] [DEFINITIONS.]

34 Subdivision 1. [TERMS.] For the purposes of this chapter,  
35 the terms defined in this section have the meanings given them.

36 Subd. 2. [ADMINISTRATOR.] "Administrator" means the person  
37 who is responsible for the administration of the service  
38 contracts or the service contracts plan or who is responsible

1 for any filings required by this chapter.

2 Subd. 3. [COMMISSIONER.] "Commissioner" means the  
3 commissioner of commerce.

4 Subd. 4. [CONSUMER.] "Consumer" means a natural person who  
5 buys, other than for purposes of resale, any tangible personal  
6 property that is distributed in commerce and that is normally  
7 used for personal, family, or household purposes and not for  
8 business or research purposes.

9 Subd. 5. [MAINTENANCE AGREEMENT.] "Maintenance agreement"  
10 means a contract of limited duration that provides for scheduled  
11 maintenance only.

12 Subd. 6. [PERSON.] "Person" means an individual,  
13 partnership, corporation, incorporated or unincorporated  
14 association, joint stock company, reciprocal, syndicate, or any  
15 similar entity or combination of entities acting in concert.

16 Subd. 7. [PREMIUM.] "Premium" means the consideration paid  
17 to an insurer for a reimbursement insurance policy.

18 Subd. 8. [PROVIDER.] "Provider" means a person who is  
19 contractually obligated to the service contract holder under the  
20 terms of the service contract.

21 Subd. 9. [PROVIDER FEE.] "Provider fee" means the  
22 consideration paid for a service contract.

23 Subd. 10. [REIMBURSEMENT INSURANCE POLICY.] "Reimbursement  
24 insurance policy" means a policy of insurance issued to a  
25 provider to either provide reimbursement to the provider under  
26 the terms of the insured service contracts issued or sold by the  
27 provider or, in the event of the provider's nonperformance, to  
28 pay on behalf of the provider all covered contractual  
29 obligations incurred by the provider under the terms of the  
30 insured service contracts issued or sold by the provider.

31 Subd. 11. [SERVICE CONTRACT.] "Service contract" means a  
32 contract or agreement for a separately stated consideration for  
33 a specific duration to perform the repair, replacement, or  
34 maintenance of property or indemnification for repair,  
35 replacement, or maintenance, for the operational or structural  
36 failure due to a defect in materials, workmanship, or normal

1 wear and tear, with or without additional provisions for  
2 incidental payment of indemnity under limited circumstances.  
3 Service contracts may provide for the repair, replacement, or  
4 maintenance of property for damage resulting from power surges  
5 and accidental damage from handling.

6 Subd. 12. [SERVICE CONTRACT HOLDER OR CONTRACT  
7 HOLDER.] "Service contract holder" or "contract holder" means a  
8 person who is the purchaser or holder of a service contract.

9 Subd. 13. [WARRANTY.] "Warranty" means a warranty made  
10 solely by the manufacturer, importer, or seller of property or  
11 services without consideration, that is not negotiated or  
12 separated from the sale of the product, and is incidental to the  
13 sale of the product, that guarantees indemnity for defective  
14 parts, mechanical or electrical breakdown, labor, or other  
15 remedial measures, such as repair or replacement of the property  
16 or repetition of services.

17 Sec. 3. [59B.03] [REQUIREMENTS FOR TRANSACTING BUSINESS.]

18 Subdivision 1. [APPOINTMENT OF ADMINISTRATOR.] A provider  
19 may, but is not required to, appoint an administrator or other  
20 designee to be responsible for any or all of the administration  
21 of service contracts and compliance with this chapter.

22 Subd. 2. [CONTRACT COPIES AND RECEIPTS.] Service contracts  
23 must not be issued, sold, or offered for sale in this state  
24 unless the provider has:

25 (1) provided a receipt for, or other written evidence of,  
26 the purchase of the service contract to the contract holder;

27 (2) provided a copy of the service contract to the service  
28 contract holder within a reasonable period of time from the date  
29 of purchase; and

30 (3) complied with this chapter.

31 Subd. 3. [REGISTRATION.] Each provider of service  
32 contracts sold in this state shall file a registration with the  
33 commissioner on a form prescribed by the commissioner. Each  
34 provider shall pay to the commissioner a fee in the amount of  
35 \$200 annually.

36 Subd. 4. [FINANCIAL REQUIREMENTS.] In order to ensure the

1 faithful performance of a provider's obligations to its contract  
2 holders, each provider is responsible for complying with the  
3 requirements of one of the following:

4 (1) insure all service contracts under a reimbursement  
5 insurance policy issued by an insurer authorized to transact  
6 insurance in this state, a risk retention group, as that term is  
7 defined in United States Code, title 15, section 3901(A)(4), as  
8 long as that risk retention group is registered pursuant to  
9 section 60E.03 or 60E.04 as applicable, and is in full  
10 compliance with the federal Liability Risk Retention Act of  
11 1986, United States Code, title 15, section 3901, et al., or  
12 issued pursuant to sections 60A.195 to 60A.209, and either:

13 (i) the insurer or risk retention group shall, at the time  
14 the policy is filed with the commissioner, and continuously  
15 thereafter, maintain surplus as to policyholders and paid-in  
16 capital of at least \$15,000,000, and annually file audited  
17 financial statements with the commissioner; or

18 (ii) the commissioner may authorize an insurer or risk  
19 retention group that has surplus as to policyholders and paid-in  
20 capital of less than \$15,000,000 but at least equal to  
21 \$10,000,000 to issue the insurance required by this section if  
22 the insurer or risk retention group demonstrates to the  
23 satisfaction of the commissioner that the company maintains a  
24 ratio of direct written premiums, wherever written, to surplus  
25 as to policyholders and paid-in capital of not greater than 3 to  
26 1; or

27 (2)(i) maintain a funded reserve account for obligations  
28 under contracts issued and outstanding in this state. The  
29 reserves must not be less than 40 percent of gross consideration  
30 received, less claims paid, on the sale of the service contract  
31 for all in-force contracts. The reserve account is subject to  
32 examination and review by the commissioner; and

33 (ii) place in trust with the commissioner a financial  
34 security deposit, having a value of not less than five percent  
35 of the gross consideration received, less claims paid, on the  
36 sale of the service contract for all service contracts issued

1 and in force, but not less than \$25,000, consisting of one of  
2 the following:

3 (A) a surety bond issued by an authorized surety;

4 (B) securities of the type eligible for deposit by  
5 authorized insurers in this state;

6 (C) cash;

7 (D) a letter of credit issued by a qualified financial  
8 institution containing an evergreen clause which prevents the  
9 expiration of the letter without due notice from the issuer; or

10 (E) another form of security prescribed by rules of the  
11 commissioner; or

12 (3) (i) maintain, or its parent company maintain, a net  
13 worth or stockholders' equity of \$100,000,000; and

14 (ii) upon request, provide the commissioner with a copy of  
15 the provider's or the provider's parent company's most recent  
16 Form 10-K or Form 20-F filed with the Securities and Exchange  
17 Commission (SEC) within the last calendar year, or if the  
18 company does not file with the SEC, a copy of the company's  
19 audited financial statements, which shows a net worth of the  
20 provider or its parent company of at least \$100,000,000. If the  
21 provider's parent company's Form 10-K, Form 20-F, or audited  
22 financial statements are filed to meet the provider's financial  
23 stability requirement, then the parent company shall agree to  
24 guarantee the obligations of the provider relating to service  
25 contracts sold by the provider in this state.

26 Subd. 5. [RIGHT OF RETURN.] Service contracts must require  
27 the provider to permit the service contract holder to return the  
28 service contract within 20 days of the date the service contract  
29 was mailed to the service contract holder or within ten days of  
30 delivery if the service contract is delivered to the service  
31 contract holder at the time of sale or within a longer time  
32 period permitted under the service contract. Upon return of the  
33 service contract to the provider within the applicable time  
34 period, if no claim has been made under the service contract  
35 before its return to the provider, the service contract is void  
36 and the provider shall refund to the service contract holder, or

1 credit the account of the service contract holder, with the full  
2 purchase price of the service contract. The right to void the  
3 service contract provided in this paragraph is not transferable  
4 and applies only to the original service contract purchaser, and  
5 only if no claim has been made before its return to the  
6 provider. A ten percent penalty per month must be added to a  
7 refund that is not paid or credited within 45 days after return  
8 of the service contract to the provider.

9 Subd. 6. [PREMIUM TAXES.] (a) Provider fees collected on  
10 service contracts are not subject to premium taxes.

11 (b) Premiums for reimbursement insurance policies are  
12 subject to applicable taxes.

13 Subd. 7. [LICENSING EXEMPTION.] Except for the  
14 registration requirements in subdivision 3, providers and  
15 related service contract sellers, administrators, and other  
16 persons marketing, selling, or offering to sell service  
17 contracts are exempt from any licensing requirements of this  
18 state.

19 Subd. 8. [INSURANCE EXEMPTION.] The marketing, sale,  
20 offering for sale, issuance, making, proposing to make, and  
21 administration of service contracts by providers and related  
22 service contract sellers, administrators, and other persons are  
23 exempt from all other provisions of the insurance laws of this  
24 state, except as provided in section 72A.20, subdivision 38.

25 Sec. 4. [59B.04] [REQUIRED DISCLOSURES; REIMBURSEMENT  
26 INSURANCE POLICY.]

27 Subdivision 1. [RIGHT TO PAYMENT OR  
28 REIMBURSEMENT.] Reimbursement insurance policies insuring  
29 service contracts issued, sold, or offered for sale in this  
30 state shall state that the insurer that issued the reimbursement  
31 insurance policy shall either reimburse or pay on behalf of the  
32 provider any covered sums the provider is legally obligated to  
33 pay or, in the event of the provider's nonperformance, shall  
34 provide the service which the provider is legally obligated to  
35 perform according to the provider's contractual obligations  
36 under the service contracts issued or sold by the provider.

1        Subd. 2. [RIGHT TO APPLY TO COMPANY.] In the event covered  
2 service is not provided by the service contract provider within  
3 60 days of proof of loss by the service contract holder, the  
4 contract holder is entitled to apply directly to the  
5 reimbursement insurance company.

6        Sec. 5. [59B.05] [REQUIRED DISCLOSURE; SERVICE CONTRACTS.]

7        Subdivision 1. [READABILITY AND GENERAL  
8 DISCLOSURE.] Service contracts marketed, sold, offered for sale,  
9 issued, made, proposed to be made, or administered in this state  
10 must be written, printed, or typed in clear, understandable  
11 language that is easy to read and must disclose the requirements  
12 set forth in this section, as applicable.

13        Subd. 2. [IDENTITIES OF PARTIES.] Service contracts must  
14 state the name and address of the provider, and must identify  
15 any administrator if different from the provider, the service  
16 contract seller, and the service contract holder to the extent  
17 that the name of the service contract holder has been furnished  
18 by the service contract holder. The identities of the parties  
19 are not required to be preprinted on the service contract and  
20 may be added to the service contract at the time of sale.

21        Subd. 3. [TOTAL PURCHASE PRICE AND SALES TERMS.] Service  
22 contracts must state the total purchase price and the terms  
23 under which the service contract is sold. The purchase price is  
24 not required to be preprinted on the service contract and may be  
25 negotiated at the time of sale with the service contract holder.

26        Subd. 4. [DEDUCTIBLES.] Service contracts must state the  
27 existence of any deductible amount, if applicable.

28        Subd. 5. [COVERAGES, LIMITATIONS, AND EXCLUSIONS.] No  
29 particular causes of loss or property are required to be  
30 covered, but service contracts must specify the merchandise and  
31 services to be provided and, with equal prominence, any  
32 limitations, exceptions, or exclusions including, but not  
33 limited to, any damage or breakdown not covered by the service  
34 contract.

35        Subd. 6. [RESTRICTIONS ON TRANSFERABILITY.] Service  
36 contracts must state any restrictions governing the

1 transferability of the service contract, if applicable.

2 Subd. 7. [CANCELLATION TERMS.] Service contracts must  
3 state the terms, restrictions, or conditions governing  
4 cancellation of the service contract prior to the termination or  
5 expiration date of the service contract by either the provider  
6 or the service contract holder. The provider of the service  
7 contract shall mail a written notice to the contract holder at  
8 the last known address of the service contract holder contained  
9 in the records of the provider at least 15 days before  
10 cancellation by the provider. Five days' notice is required if  
11 the reason for cancellation is nonpayment of the provider fee, a  
12 material misrepresentation by the service contract holder to the  
13 provider, or a substantial breach of duties by the service  
14 contract holder relating to the covered product or its use. The  
15 notice must state the effective date of the cancellation and the  
16 reason for the cancellation.

17 Subd. 8. [DUTIES OF CONTRACT HOLDER.] Service contracts  
18 must set forth all of the obligations and duties of the service  
19 contract holder, such as the duty to protect against any further  
20 damage and any requirement to follow the owner's manual.

21 Subd. 9. [EXCLUSIONS; CONSEQUENTIAL DAMAGES AND  
22 PREEXISTING CONDITIONS.] Service contracts may exclude coverage  
23 for consequential damages or preexisting conditions. These  
24 exclusions, if applicable, must be stated in the contract.

25 Sec. 6. [59B.06] [ADDITIONAL REQUIRED DISCLOSURE; SERVICE  
26 CONTRACTS.]

27 Subdivision 1. [INSURANCE DISCLOSURE.] Service contracts  
28 insured under a reimbursement insurance policy pursuant to  
29 section 59B.03, subdivision 4, clause (1), must contain a  
30 statement in substantially the following form: "Obligations of  
31 the provider under this service contract are insured under a  
32 service contract reimbursement insurance policy." The service  
33 contract must also state the name and address of the insurer.

34 Subd. 2. [DISCLOSURE OF NO INSURANCE.] Service contracts  
35 not insured under a reimbursement insurance policy pursuant to  
36 section 59B.03, subdivision 4, clause (1), must contain a

1 statement in substantially the following form: "Obligations of  
2 the provider under this service contract are backed by the full  
3 faith and credit of the provider."

4 Sec. 7. [59B.07] [PROHIBITED ACTS.]

5 Subdivision 1. [DECEPTIVE NAMES.] A provider shall not se  
6 in its name the words insurance, casualty, surety, mutual, or  
7 any other words descriptive of the insurance, casualty, or  
8 surety business; or a name deceptively similar to the name o  
9 description of any insurance or surety corporation, or to th  
10 name of any other provider. The word "guaranty" or similar word  
11 may be used by a provider. This section does not apply to  
12 company that was using any of the prohibited language in its  
13 name before the effective date of this chapter. However, a  
14 company using the prohibited language in its name shall include  
15 in its service contracts a statement in substantially the  
16 following form: "This agreement is not an insurance contract."

17 Subd. 2. [FALSE OR MISLEADING STATEMENTS.] A provider or  
18 its representative shall not in its service contracts,  
19 literature, or otherwise make, permit, or cause to be made any  
20 false or misleading statement or omit any material statement  
21 that would be considered misleading if omitted.

22 Subd. 3. [REQUIRED PURCHASE.] A person, such as a bank,  
23 savings association, lending institution, manufacturer, or  
24 seller of any product shall not require the purchase of a  
25 service contract as a condition of a loan or a condition for the  
26 sale of any property.

27 Sec. 8. [59B.08] [RECORD-KEEPING REQUIREMENTS.]

28 Subdivision 1. [GENERALLY.] The provider shall keep  
29 accurate accounts, books, and records concerning transactions  
30 regulated under this chapter.

31 The provider's accounts, books, and records include the  
32 following:

- 33 (1) copies of each type of service contracts sold;  
34 (2) the name and address of each service contract holder to  
35 the extent that the name and address have been furnished by the  
36 service contract holder;

1 (3) a list of the locations where service contracts are  
2 marketed, sold, or offered for sale; and

3 (4) written claims files which shall contain information  
4 regarding the services provided or claims payments for contracts  
5 that provide for payments or reimbursement, including at least  
6 the dates and description of claims related to the service  
7 contracts.

8 Subd. 2. [RETENTION.] (a) Except as provided in paragraph  
9 (b), the provider shall retain all records required to be  
10 maintained by this section for at least three years after the  
11 specified period of coverage has expired.

12 (b) A provider discontinuing business in this state shall  
13 maintain its records until it furnishes the commissioner  
14 satisfactory proof that it has discharged all obligations to  
15 contract holders in this state.

16 Subd. 3. [MEDIUM.] The records required by this chapter  
17 may be, but are not required to be, maintained on a computer  
18 disk or other record-keeping technology. If the records are  
19 maintained in other than hard copy, the records must be capable  
20 of duplication to legible hard copy at the request of the  
21 commissioner.

22 Sec. 9. [59B.09] [TERMINATION OF REIMBURSEMENT INSURANCE  
23 POLICY.]

24 An insurer that issued a reimbursement insurance policy may  
25 not terminate the policy unless the insurer mails or delivers  
26 written notice of the termination to the commissioner at least  
27 30 days before the effective date of termination. The  
28 termination of a reimbursement insurance policy does not reduce  
29 the issuer's responsibility for service contracts issued by  
30 providers before the date of the termination.

31 Sec. 10. [59B.10] [OBLIGATION OF REIMBURSEMENT INSURANCE  
32 POLICY INSURERS.]

33 Insurers issuing reimbursement insurance to providers are  
34 deemed to have received the premiums for the insurance upon the  
35 payment of provider fees by consumers for service contracts  
36 issued by the insured providers.

1 Nothing in this chapter prevents or limits the right of an  
 2 insurer which issued a reimbursement insurance policy to seek  
 3 indemnification or subrogation against a provider if the issuer  
 4 pays or is obligated to pay the service contract holder sums  
 5 that the provider was obligated to pay pursuant to the  
 6 provisions of the service contract.

7 Sec. 11. [59B.11] [SEVERABILITY PROVISION.]

8 If any provision of this chapter or the application of the  
 9 provision to any person or circumstances are held invalid, the  
 10 remainder of this chapter and the application of the provision  
 11 to person or circumstances other than those as to which it is  
 12 held invalid, must not be affected.

13 Sec. 12. Minnesota Statutes 2004, section 72A.20, is  
 14 amended by adding a subdivision to read:

15 Subd. 38. [UNFAIR CLAIMS SERVICE; SERVICE CONTRACTS.] No  
 16 person shall, in connection with a service contract regulated  
 17 under chapter 59B:

18 (1) attempt to settle claims on the basis of an application  
 19 or any other material document which was altered without notice  
 20 to, or knowledge or consent of, the service contract holder;

21 (2) make a material misrepresentation to the service  
 22 contract holder for the purpose and with the intent of effecting  
 23 settlement of the claims, loss, or damage under the contract on  
 24 less favorable terms than those provided in, and contemplated  
 25 by, the contract; or

26 (3) commit or perform with such frequency as to indicate a  
 27 general business practice any of the following practices:

28 (i) failure to properly investigate claims;

29 (ii) misrepresentation of pertinent facts or contract  
 30 provisions relating to coverages at issue;

31 (iii) failure to acknowledge and act upon communications  
 32 within a reasonable time with respect to claims;

33 (iv) denial of claims without conducting reasonable  
 34 investigations based upon available information;

35 (v) failure to affirm or deny coverage of claims upon  
 36 written request of the service contract holder within a

1 reasonable time after proof-of-loss statements have been  
2 completed; or

3 (vi) failure to timely provide a reasonable explanation to  
4 the service contract holder of the basis in the contract in  
5 relation to the facts or applicable law for denial of a claim or  
6 for the offer of a compromise settlement.

7 Sec. 13. [EFFECTIVE DATE.]

8 Sections 1 to 12 are effective January 1, 2006, and apply  
9 to service contracts issued on or after that date. A provider  
10 transacting business in this state on or before the date of the  
11 enactment of this chapter, which submits an application for  
12 registration as a provider under Minnesota Statutes, section  
13 59B.03, subdivision 3, within 30 days after the commissioner  
14 makes the application available, may continue to transact  
15 business in this state until final agency action is taken by the  
16 commissioner regarding the registration application and all  
17 rights to administrative and judicial review related to that  
18 final agency action have been exhausted or have expired."

19 Delete the title and insert:

20 "A bill for an act relating to commerce; regulating service  
21 contracts and contract providers; providing exceptions; amending  
22 Minnesota Statutes 2004, section 72A.20, by adding a  
23 subdivision; proposing coding for new law as Minnesota Statutes,  
24 chapter 59B."

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

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32

*Linda Scheid*  
.....  
(Committee Chair)

April 11, 2005.....  
(Date of Committee recommendation)