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

S.F. No. 2757: A bill for an act relating to public safety; providing for prevention, preparedness, and response to unauthorized releases of extraordinarily hazardous substances; proposing coding for new law in Minnesota Statutes, chapter 115E.

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

Page 1, after line 5, insert:

"Section 1. Minnesota Statutes 2004, section 13.6905, is amended by adding a subdivision to read:

Subd. 1a. **Extraordinarily hazardous substance assessments and plans.** Extraordinarily hazardous substance assessments and plans are classified under section 115E.22, subdivision 5."

Page 4, delete lines 21 to 23 and insert:

"Subd. 5. **Data.** Assessments and plans prepared under this section are nonpublic data as defined in section 13.02 except that the data may be provided to law enforcement, firefighters, members of the National Guard, or other representatives of a government entity responding to a request for services at a facility that is the subject of the assessment and plan."

Renumber the sections in sequence

Amend the title accordingly

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

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

Senators Ranum, Anderson and Lourey introduced–

S.F. No. 2757: Referred to the Committee on Crime Prevention and Public Safety.

A bill for an act

relating to public safety; providing for prevention, preparedness, and response to unauthorized releases of extraordinarily hazardous substances; proposing coding for new law in Minnesota Statutes, chapter 115E.

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

Section 1. **[115E.20] DEFINITIONS.**

Subdivision 1. **Scope.** The definitions in this section apply to sections 115E.20 to 115E.22.

Subd. 2. **Extraordinarily hazardous substance.** "Extraordinarily hazardous substance" means any substance or chemical compound used, manufactured, stored, or capable of being produced from on-site components in this state in sufficient quantities at a single site such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability.

Subd. 3. **Extraordinarily hazardous substance list.** "Extraordinarily hazardous substance list" means the substances or chemical compounds identified in section 115E.21, subdivision 1, and identified by rule according to section 115E.21, subdivision 3.

Subd. 4. **Facility.** "Facility" means a building, equipment, and contiguous area. Facility includes a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

Subd. 5. **Security measure.** "Security measure" means an action carried out to increase the security of a facility, including employee training and background checks, limitation and prevention of access to controls of the facility, protection of the perimeter of the facility, installation and operation of an intrusion detection sensor, or a measure to increase computer or computer network security.

Subd. 6. **Unauthorized release.** "Unauthorized release" means a release from a facility into the environment of an extraordinarily hazardous substance that is caused, in whole or in part, by a criminal act, a release into the environment of an extraordinarily hazardous substance that has been removed from a facility, in whole or in part, by a criminal act, or a release or removal from a facility of an extraordinarily hazardous substance that is unauthorized by the owner or operator of the facility.

Subd. 7. **Use of inherently safer technology.** "Use of inherently safer technology" means the use of a technology, product, raw material, or practice that, as compared with the technologies, products, raw materials, or practices currently in use, reduces or eliminates the possibility of a release of an extraordinarily hazardous substance prior to secondary containment, control, or mitigation and reduces or eliminates the threats to public health and the environment associated with an unauthorized release or potential unauthorized release of an extraordinarily hazardous substance.

Sec. 2. **[115E.21] EXTRAORDINARILY HAZARDOUS SUBSTANCE LIST; REGISTRATION.**

Subdivision 1. **Initial list.** The following chemicals or chemical compounds, in the quantities indicated, constitute the initial extraordinarily hazardous substance list:

(1) hydrogen chloride (HCl) and allyl chloride in quantities of 2,000 pounds or more;

(2) hydrogen cyanide (HCN), hydrogen fluoride (HF), chlorine (Cl2), phosphorus trichloride, and hydrogen sulfide (H2S) in quantities of 500 pounds or more; and

(3) phosgene, bromine, methyl isocyanate (MIC), and toluene-2, 4-diisocyanate (TDS) in quantities of 100 pounds or more.

Subd. 2. **Registration.** Within 60 days of the effective date of this act, the commissioner of public safety shall develop and issue a registration form to be completed within 120 days of the effective date of this act by the owner or operator of each facility in the state that at any time generates, stores, or handles any of the extraordinarily hazardous substances in the threshold amounts on the initial extraordinarily hazardous substance list under subdivision 1. The registration form shall provide, in addition to any other information that may be required by the commissioner, the following:

(1) an inventory of the extraordinarily hazardous substance or substances generated, stored, or handled at the facility and the quantity or quantities of the substances. The inventory must identify whether the substances are end products, intermediate products, byproducts, or waste products;

(2) a general description of the processes and principal equipment involved in the management of the substance or substances;

(3) a profile of the area in which the facility is situated, including its proximity to population and water supplies;

(4) the extent to which the risks and hazards of the processes, equipment, and operations have been identified, evaluated, and abated and the expertise and affiliation of the evaluators and any direct or indirect relationship between the evaluators and the owner or operator of the facility; and

(5) the name or names of all insurance carriers underwriting the facility's environmental liability and workers' compensation insurance policies and the scope of the policies, including any limitations and exclusions.

Subd. 3. **Additions to list by rule.** Within 18 months of the effective date of this act, the commissioner of the Pollution Control Agency, in consultation with the commissioner of health, shall develop and adopt as a rule an extraordinarily hazardous substance list. The list shall correlate the substances or compounds with the quantities required to produce the potentially catastrophic circumstance. The commissioner may amend, by rule, the extraordinarily hazardous substance list to accommodate new chemical compounds that may be developed or reflect new information or scientific data that may become available to the commissioner.

Subd. 4. **Subsequent registration.** Within 90 days of the adoption of an extraordinarily hazardous substance list under subdivision 3, the owner or operator of each facility in the state that generates, stores, or handles any of the extraordinarily hazardous substances in the threshold amounts on the extraordinarily hazardous substance list, not registered according to subdivision 2, shall complete the registration form developed and issued by the commissioner.

Sec. 3. **[115E.22] UNAUTHORIZED RELEASES; PREVENTION, PREPAREDNESS, AND RESPONSE.**

Subdivision 1. **Risk assessment.** Within one year of the effective date of this act, the owner or operator of each facility in the state that at any time generates, stores, or handles any of the extraordinarily hazardous substances in the threshold amounts on the extraordinarily hazardous substance list adopted under section 115E.21 must:

(1) conduct an assessment of the vulnerability of the facility to a terrorist attack or other unauthorized release;

(2) identify and assess hazards, using appropriate hazard assessment techniques, that may result from an unauthorized release of any extraordinarily hazardous substance; and

(3) assess the use of inherently safer technology in reducing or eliminating the possibility of an unauthorized release.

Subd. 2. **Prevention, preparedness, and response plan required.** Within 18 months of the effective date of this act, the owner or operator of each facility in the state that is required to complete the assessments under subdivision 1 must prepare, and submit to the commissioner of public safety for review and approval, a prevention, preparedness, and response plan that incorporates the results of the vulnerability and hazard assessments conducted under subdivision 1.

Subd. 3. **Plan requirements.** The prevention, preparedness, and response plan under this section must include actions and procedures, including safer design and maintenance of the facility, use of inherently safer technology, and all appropriate security measures, undertaken to eliminate or significantly lessen the potential consequences of an unauthorized release of any extraordinarily hazardous substance.

Subd. 4. **Required consultation.** The requirements of subdivisions 1 to 3 must be completed in consultation with local law enforcement, first responders, and employees of the facility.

Subd. 5. **Data privacy.** The assessments and plan required by this section are not public data and are not subject to any state or federal freedom of information law, including but not limited to, chapter 13.

Senator ..... moves to amend S.F. No. 2757 as follows:

Page 1, after line 5, insert:

"Section 1. Minnesota Statutes 2004, section 13.6905, is amended by adding a subdivision to read:

Subd. 1a. **Extraordinarily hazardous substance assessments and plans.** Extraordinarily hazardous substance assessments and plans are classified under section 115E.22, subdivision 5."

Page 4, delete lines 21 to 23, and insert:

"Subd. 5. **Data.** Assessments and plans prepared under this section are nonpublic data as defined in section 13.02 except that the data may be provided to law enforcement, firefighters, members of the National Guard, or other representatives of a government entity responding to a request for services at a facility that is the subject of the assessment and plan."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

SF 2757

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N.J. officials tell chemical plants to assess security

Wednesday, November 30, 2005

By ALEX NUSSBAUM and COLLEEN DISKIN
STAFF WRITERS

New Jersey became the first state in the nation to require security assessments at chemical plants Tuesday and left the door open to tougher requirements to prevent terror attacks or accidents at 140 businesses around the state.

The announcement by acting Governor Codey capped four years of talks and squabbling among activists, the government and the state's $27 billion chemical industry about how far to go to protect factories that often sit cheek by jowl with crowded residential neighborhoods.

"We must explore any measure ... to better protect us from uncertainty," said Codey, who promised to "ensure that this initiative improves security and emergency response plans at each chemical facility."

The new rules, approved by state officials last week, drew mixed reactions. One environmental and labor group called it a good beginning but said tighter regulations were still needed. Industry, on the other hand, complained that the state had abandoned an agreement to work with businesses on voluntary measures.

"For reasons not clear to us, it seems the cooperative approach between the state and our sector is being abandoned," read a statement from the Chemistry Council of New Jersey, which represents about 100 manufacturers. "The prescriptive order seems to penalize early, responsible actors, while adding requirements that have little to do with security."

The standards largely impose security requirements, or "best practices," proposed by industry groups, however.

Tightening plant security has been a rallying cry for U.S. Sen. Jon Corzine, New Jersey's governor-elect. The Democrat has pushed for tougher federal requirements since the Sept. 11 terror attacks, but the chemical industry and Republican lawmakers have blocked them.

Corzine applauded Codey's move Tuesday, but added that the measure was only a "first step."

"Unguarded chemical facilities are a ticking time bomb and represent a threat to our national security," Corzine said. "I look forward to continuing to work on this critical issue and to strengthening these regulations."

The measure would affect dozens of refineries, pharmaceutical plants, fragrance and flavor manufacturers, water and sewage treatment plants and other facilities that use corrosive or explosive materials, such as chlorine and hydrogen fluoride. New Jersey has seven plants where a chemical accident could threaten more than 1 million people, according to government records, and federal authorities have called one stretch near Newark the most vulnerable two miles in the country because of its lineup of chemical plants and critical infrastructure.

Under the new requirements, plants would have 120 days to do vulnerability assessments, reviewing their readiness to handle a terrorist attack or a major accident. They would also have to adopt industry "best practices" on such issues as security measures and transporting materials.

In addition, 43 plants that use "extraordinarily hazardous" materials will have to study whether they could

adopt "inherently safer technology" - new equipment or procedures that could reduce their dependence on such chemicals.

Voluntary reviews have already been done, but the quality of those assessments has been "uneven," said Bradley Campbell, the state's commissioner of environmental protection.

The current rules leave it to industry to decide whether to adopt new technologies, but the assessments will help the Corzine administration decide whether more regulation is needed, Campbell added. Two public hearings on chemical safety - the first scheduled for Thursday in Trenton - will also help the state gather information, he said.

"We need a better record in which to make regulatory decisions," Campbell said. "It will be up to the next administration to determine what other steps need to be taken."

The New Jersey Work Environment Council, which represents chemical workers and environmental groups, welcomed the requirements.

"It's really about looking at operations overall, not just relying on guns, gates and guards," said Rick Engler, the group's director. "It means looking at the many ways an operation could be run more safely."

Activists, however, still complained that some of the standards were lifted straight from industry guidelines and could have been stronger. The regulations amounted to mere "public relations," groused Jeff Tittel, executive director of the Sierra Club in New Jersey.

The Chemistry Council, however, said most of its members have upgraded their security since Sept. 11. New Jersey plants have spent more than $100 million on those upgrades, said Elvin Montero, a council spokesman.

The new rules could increase costs for businesses that store chemicals but aren't terrorism targets, such as paint stores, Montero said. As for adopting "safer" technology, many companies would respond by having more materials stored off-site and then shipped to a plant when needed, he added. That wouldn't necessarily reduce the danger, he said.

"Instead of being stored at facilities where they know how to handle chemical X, this now puts chemical X in trucks and different transportation forms and creates a danger not in chemical facilities but for people driving down the [New Jersey] Turnpike," he said.

E-mail: nussbaum@northjersey.com

THE REAL PROBLEM

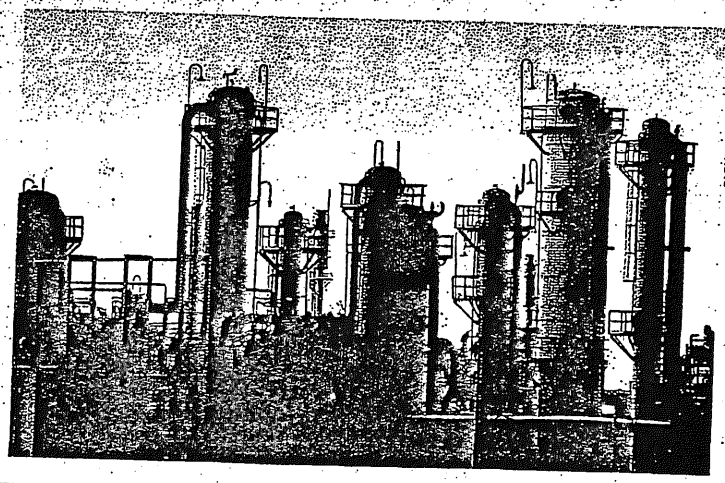
IT'S DO-IT-YOURSELF SECURITY

By MARK THOMPSON and DOUGLAS WALLER

In mid-2002, the White House assigned the Environmental Protection Agency (EPA) to secure the nation's chemical plants. The EPA and the fledgling White House Office of Homeland Security spent months developing a legislative package requiring the chemical industry to beef up security. In March 2003 a dozen senior Administration officials met in the Old Executive Office Building next door to the White House to put the finishing touches on what they considered a major initiative.

The furor over the now delayed deal to allow a United Arab Emirates company to operate six U.S. ports was tailor-made for talk radio. Arabs! At the ports! But the genuinely scary aspect of the deal was warnings from security experts that it doesn't much matter who operates America's maritime centers because none of them is totally secure. The problem pointed to most often is a lack of oversight. Customs agents inspect a small percentage of shipping containers, but the Bush Administration asks cargo companies to supervise the bulk of security. It's an arrangement designed to allow the President to be true to two bedrock principles—being tough on terrorism and resisting federal regulation of private industry. "That leads to a paradox in the security area," says Stephen Flynn, a terrorism expert at the Council on Foreign Relations, "because [security] requires a more assertive federal role."

But in areas just as vulnerable to attack as shipping, the Administration has consistently backed away from—and sometimes simply blocked—federal regulation. A terrorist attack on a chemical facility could kill thousands of people and endanger up to a million, federal experts say, so with TIME on the record, his spokesman says Perry doesn't recall the meeting and Bostock's account "is not accurate or fair."



PHILIP GOULD—CORBIS

ROBERT GALBRAITH—REUTERS/LANDOV

BLOCKED
Perry said no to putting EPA in charge of securing U.S. chemical plants from terrorist attacks

Today only about 1,100 of the nation's 15,000 biggest plants participate in the voluntary security program. Even Bush loyalists are worried about the vulnerability that remains. "Not all chemical sites are good partners," said Asa Hutchinson, a former top Homeland Security official, at a recent chemical-industry gathering. "Some of the top-tier sites will not let Homeland Security inside the fence."

In some instances, White House officials have gone straight to Capitol Hill to squelch regulatory efforts. In June 2003 Edward Markey, a Democrat from Massachusetts, introduced an amendment to mandate 100% inspection of airplane cargo. While airline passengers walk through metal detectors and have all their bags screened, the 6 billion pounds of cargo traveling beneath them each year is subject only to spot inspections by the feds. The government leaves it up to air carriers and the companies that forward freight to the carriers to screen their regular cargo customers.

The House passed Markey's amendment by a 278-146 vote, but the airline industry, which makes about $17 billion annually from cargo on passenger planes, claimed that the technology for 100% inspection wasn't available and that even if it did exist, costs would be prohibitive. Senior officials at the DHS agreed, and that fall they persuaded House-Senate conferees to strip Markey's amendment from the appropriations bill. "The Bush Administration bends over backwards for industry while turning its back on needed homeland-security safeguards," Markey complains. "It's commerce over common sense." But Russ Knocke, a DHS spokesman, argues that such public-private partnerships maximize security without "shutting down the systems and industries we depend upon."

Still, nearly five years after 9/11, it's becoming apparent even to some members of the Administration that private industry can't be relied on to protect the nation's infrastructure on its own. "Expecting a trade association to tell a business it needs to spend more money on security isn't sufficient," says Sal DePasquale, a Georgia chemical-security expert, who helped draft the industry's current voluntary plan. Congress is looking at making chemical-plant security mandatory, and DHS officials say they're ready to order beefed-up security for chemical facilities as well. But that process could take years, and who knows what will happen when new regulations are finally ready for Administration approval. Especially since the DHS's new general counsel is none other than Philip Perry. ■

Belleville.com

Posted on Mon, Feb. 27, 2006

Obama cites poor security at chemical plants

Associated Press

WASHINGTON - Sen. Barack Obama, warning that a terrorist attack on a major chemical plant could cause disastrous results affecting potentially a million or more people, urged Monday that the federal government impose safety standards on the industry.

"Unfortunately, at many of the chemical plants in our nation, the security is light, the facilities are easily entered and the contents are deadly," Obama, D-Ill., said in a statement announcing that he and Sen. Frank Lautenberg, D-N.J., would prepare legislation to address the issue.

Under their proposal, the Environmental Protection Agency and the Department of Homeland Security would identify high-priority chemical threats and write security regulations. Each plant would have to conduct vulnerability studies and develop prevention, preparedness and response plans.

"Safety regulations can be implemented in a way that is flexible enough for the industry yet stringent enough to protect the American people," Obama said. "It is long past time to put the security of our nation ahead of special interests or politics."

According to federal environmental regulators, there are four chemical plants within Chicago that, if attacked under a worst-case scenario, could threaten more than a million people. Altogether, Illinois has at least 10 such facilities, with an additional 20 where a chemical release could threaten more than 100,000 people.

Obama noted that in Chicago a local television station found major security problems at a number of Chicago plants, including unguarded access points that allowed people to walk unchallenged to large chemical tanks.

Marty Durbin, the managing director of federal affairs for the American Chemistry Council and a nephew of Sen. Dick Durbin, D-Ill., said his group has been working to have Congress advance federal legislation.

"As far as the need for federal legislation, we're in complete agreement," he said. "Our view is you need federal standards, national standards, so you have one standard."

Durbin said some 130 companies that are members of his group have made about $3 billion in security improvements since the terrorist attacks of Sept. 11, 2001.

He declined to comment more specifically until the Obama-Lautenberg legislation has been introduced.

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

S.F. No. 2991: A bill for an act relating to family; creating a supervised visitation advisory committee; adjusting marriage dissolution fees to fund parenting time centers; appropriating money; amending Minnesota Statutes 2005 Supplement, sections 357.021, subdivisions 1a, 2; 517.08, subdivision 1c; proposing coding for new law in Minnesota Statutes, chapter 299A.

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

Page 3, line 33, delete "2006" and insert "2007"

Page 5, line 15, delete "2006" and insert "2007"

And when so amended the bill do pass and be re-referred to the Committee on State and Local Government Operations. Amendments adopted. Report adopted.

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

Senators McGinn, Pappas, Ruud, Skoglund and Wiger introduced–

S.F. No. 2991: Referred to the Committee on Judiciary.

A bill for an act

relating to family; creating a supervised visitation advisory committee; adjusting marriage dissolution fees to fund parenting time centers; appropriating money; amending Minnesota Statutes 2005 Supplement, sections 357.021, subdivisions 1a, 2; 517.08, subdivision 1c; proposing coding for new law in Minnesota Statutes, chapter 299A.

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

Section 1. **[299A.191] SUPERVISED VISITATION ADVISORY COMMITTEE.**

Subdivision 1. **Generally.** The commissioner shall appoint a 15-member advisory committee to advise the commissioner on the disbursement of funds appropriated by the commissioner of finance from the special revenue fund for parenting time centers under section 357.021. The Advisory Committee on Supervised Visitation shall also serve as a liaison between the commissioner and organizations that provide supervised visitation services to families. Section 15.059 governs the filling of vacancies and removal of members of the advisory committee. The terms of the advisory committee shall be two years. No member may serve more than two consecutive terms. Notwithstanding section 15.059, the committee shall not expire. Committee members shall not receive a per diem, but shall receive expenses in the same manner and amount as state employees.

Subd. 2. **Membership.** Persons appointed shall be knowledgeable about and have interest in issues concerning supervised visitation. Membership on the committee shall include, but not be limited to:

(a) eight members of the board of directors of the Minnesota Chapter of the Supervised Visitation Network, with four of these members from nonmetropolitan regions of Minnesota;

(b) the director of the state guardian ad litem program, or the director's designee;

(c) a representative from the Minnesota Supreme Court Children's Justice Initiative;

(d) a member of the family law section of the Minnesota State Bar Association;

(e) the commissioner of public safety, or that individual's designee;

(f) the commissioner of human services, or that individual's designee; and

(g) two county social service directors, one from the metropolitan area and one from a nonmetropolitan region of Minnesota.

Subd. 3. **Duties.** The advisory committee shall:

(1) advise the commissioner on planning, development, data collection, funding, and evaluation of programs and services for families referred for services at parenting time centers funded under this section;

(2) advise the commissioner on the adoption of rules under chapter 14 governing the award of grants to ensure that funded programs operate consistent with the guidelines of the Supervised Visitation Network;

(3) review applications received by the commissioner for grants and make recommendations on the awarding of grants;

(4) recommend to the commissioner the names of five applicants for the position of parenting time centers program director; and

(5) advise the program director in the performance of duties in the administration and coordination of the programs funded under this section.

EFFECTIVE DATE. This section is effective July 1, 2006.

Sec. 2. Minnesota Statutes 2005 Supplement, section 357.021, subdivision 1a, is amended to read:

Subd. 1a. **Transmittal of fees to commissioner of finance.** (a) Every person, including the state of Minnesota and all bodies politic and corporate, who shall transact any business in the district court, shall pay to the court administrator of said court the sundry fees prescribed in subdivision 2. Except as provided in paragraph (d), the court administrator shall transmit the fees monthly to the commissioner of finance for deposit in the state treasury and credit to the general fund. $30 of each fee collected in a dissolution action under subdivision 2, clause (1), must be deposited by the commissioner of finance in the special revenue fund and is appropriated to the commissioner of employment and economic development for the displaced homemaker program under section 116L.96; and $25 of each fee collected in a dissolution action under subdivision 2, clause (1), must be deposited by the commissioner of finance in the special revenue fund and is appropriated to the commissioner of public safety for parenting time centers under section 299A.191.

(b) In a county which has a screener-collector position, fees paid by a county pursuant to this subdivision shall be transmitted monthly to the county treasurer, who shall apply the fees first to reimburse the county for the amount of the salary paid for the screener-collector position. The balance of the fees collected shall then be forwarded to the commissioner of finance for deposit in the state treasury and credited to the general fund. In a county in a judicial district under section 480.181, subdivision 1, paragraph (b), which has a screener-collector position, the fees paid by a county shall be transmitted monthly to the commissioner of finance for deposit in the state treasury and credited to the general fund. A screener-collector position for purposes of this paragraph is an employee whose function is to increase the collection of fines and to review the incomes of potential clients of the public defender, in order to verify eligibility for that service.

(c) No fee is required under this section from the public authority or the party the public authority represents in an action for:

(1) child support enforcement or modification, medical assistance enforcement, or establishment of parentage in the district court, or in a proceeding under section 484.702;

(2) civil commitment under chapter 253B;

(3) the appointment of a public conservator or public guardian or any other action under chapters 252A and 525;

(4) wrongfully obtaining public assistance under section 256.98 or 256D.07, or recovery of overpayments of public assistance;

(5) court relief under chapter 260;

(6) forfeiture of property under sections 169A.63 and 609.531 to 609.5317;

(7) recovery of amounts issued by political subdivisions or public institutions under sections 246.52, 252.27, 256.045, 256.25, 256.87, 256B.042, 256B.14, 256B.15, 256B.37, 260B.331, and 260C.331, or other sections referring to other forms of public assistance;

(8) restitution under section 611A.04; or

(9) actions seeking monetary relief in favor of the state pursuant to section 16D.14, subdivision 5.

(d) $20 from each fee collected for child support modifications under subdivision 2, clause (13), must be transmitted to the county treasurer for deposit in the county general fund and $35 from each fee shall be credited to the state general fund. The fees must be used by the county to pay for child support enforcement efforts by county attorneys.

EFFECTIVE DATE. This section is effective July 1, 2006.

Sec. 3. Minnesota Statutes 2005 Supplement, section 357.021, subdivision 2, is amended to read:

Subd. 2. **Fee amounts.** The fees to be charged and collected by the court administrator shall be as follows:

(1) In every civil action or proceeding in said court, including any case arising under the tax laws of the state that could be transferred or appealed to the Tax Court, the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of $240, except in marriage dissolution actions the fee is ~~$270~~ $295.

The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of $240, except in marriage dissolution actions the fee is ~~$270~~ $295.

The party requesting a trial by jury shall pay $75.

The fees above stated shall be the full trial fee chargeable to said parties irrespective of whether trial be to the court alone, to the court and jury, or disposed of without trial, and shall include the entry of judgment in the action, but does not include copies or certified copies of any papers so filed or proceedings under chapter 103E, except the provisions therein as to appeals.

(2) Certified copy of any instrument from a civil or criminal proceeding, $10, and $5 for an uncertified copy.

(3) Issuing a subpoena, $12 for each name.

(4) Filing a motion or response to a motion in civil, family, excluding child support, and guardianship cases, $55.

(5) Issuing an execution and filing the return thereof; issuing a writ of attachment, injunction, habeas corpus, mandamus, quo warranto, certiorari, or other writs not specifically mentioned, $40.

(6) Issuing a transcript of judgment, or for filing and docketing a transcript of judgment from another court, $30.

(7) Filing and entering a satisfaction of judgment, partial satisfaction, or assignment of judgment, $5.

(8) Certificate as to existence or nonexistence of judgments docketed, $5 for each name certified to.

(9) Filing and indexing trade name; or recording basic science certificate; or recording certificate of physicians, osteopaths, chiropractors, veterinarians, or optometrists, $5.

(10) For the filing of each partial, final, or annual account in all trusteeships, $40.

(11) For the deposit of a will, $20.

(12) For recording notary commission, $100, of which, notwithstanding subdivision 1a, paragraph (b), $80 must be forwarded to the commissioner of finance to be deposited in the state treasury and credited to the general fund.

(13) Filing a motion or response to a motion for modification of child support, a fee of $55.

(14) All other services required by law for which no fee is provided, such fee as compares favorably with those herein provided, or such as may be fixed by rule or order of the court.

(15) In addition to any other filing fees under this chapter, a surcharge in the amount of $75 must be assessed in accordance with section 259.52, subdivision 14, for each adoption petition filed in district court to fund the fathers' adoption registry under section 259.52.

The fees in clauses (3) and (5) need not be paid by a public authority or the party the public authority represents.

EFFECTIVE DATE. This section is effective July 1, 2006.

Sec. 4. Minnesota Statutes 2005 Supplement, section 517.08, subdivision 1c, is amended to read:

Subd. 1c. **Disposition of license fee.** (a) Of the marriage license fee collected pursuant to subdivision 1b, paragraph (a), $15 must be retained by the county. The local registrar must pay $85 to the commissioner of finance to be deposited as follows:

(1) $50 in the general fund;

(2) $3 in the special revenue fund to be appropriated to the commissioner of ~~education~~ public safety for parenting time centers under section ~~119A.37~~ 299A.19;

(3) $2 in the special revenue fund to be appropriated to the commissioner of health for developing and implementing the MN ENABL program under section 145.9255;

(4) $25 in the special revenue fund is appropriated to the commissioner of employment and economic development for the displaced homemaker program under section 116L.96; and

(5) $5 in the special revenue fund is appropriated to the commissioner of human services for the Minnesota Healthy Marriage and Responsible Fatherhood Initiative under section 256.742.

(b) Of the $30 fee under subdivision 1b, paragraph (b), $15 must be retained by the county. The local registrar must pay $15 to the commissioner of finance to be deposited as follows:

(1) $5 as provided in paragraph (a), clauses (2) and (3); and

(2) $10 in the special revenue fund is appropriated to the commissioner of employment and economic development for the displaced homemaker program under section 116L.96.

(c) The increase in the marriage license fee under paragraph (a) provided for in Laws 2004, chapter 273, and disbursement of the increase in that fee to the special fund for the Minnesota Healthy Marriage and Responsible Fatherhood Initiative under paragraph (a), clause (5), is contingent upon the receipt of federal funding under United States Code, title 42, section 1315, for purposes of the initiative.

EFFECTIVE DATE. This section is effective July 1, 2006.

Sec. 5. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall renumber section 119A.37 as 299A.19. The revisor shall also make necessary cross-reference changes consistent with the renumbering.

EFFECTIVE DATE. This section is effective July 1, 2006.

To: Senator Betzold, Chair

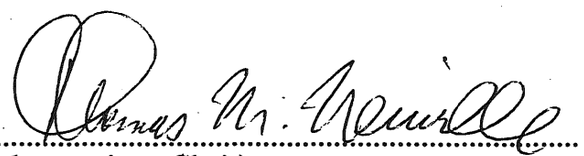
Committee on Judiciary

Senator Neuville,

Chair of the Subcommittee on Family Law, to which was referred

S.F. No. 2991: A bill for an act relating to family; creating a supervised visitation advisory committee; adjusting marriage dissolution fees to fund parenting time centers; appropriating money; amending Minnesota Statutes 2005 Supplement, sections 357.021, subdivisions 1a, 2; 517.08, subdivision 1c; proposing coding for new law in Minnesota Statutes, chapter 299A.

Reports the same back with the recommendation that the bill do pass and be referred to the full committee.



.....
(Subcommittee Chair)

March 21, 2006 .....
(Date of Subcommittee action)

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

S.F. No. 2403: A bill for an act relating to marriage; providing for the solemnization of Hmong marriages; imposing criminal penalties for knowingly facilitating the solemnization of a prohibited marriage; clarifying filing requirements for certain Quaker marriages; requiring the reporting of certain acts; amending Minnesota Statutes 2004, sections 517.05; 517.14; 517.18; Minnesota Statutes 2005 Supplement, section 626.556, subdivisions 2, 3.

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

Page 1, line 13, strike "court administrator of the district court" and insert "local registrar"

Page 1, lines 18 and 20, delete "court administrator" and insert "local registrar"

Page 1, line 21, delete "The"

Page 1, delete lines 22 and 23

Page 1, line 24, delete everything before the first "The"

Page 2, line 33, delete the comma

Page 2, line 34, delete everything before the period

Page 3, lines 3 and 7, delete "one month" and insert "five days"

Page 3, line 5, delete "district court" and insert "local registrar"

Page 3, line 9, delete "court administrator" and insert "local registrar"

Page 3, line 14, delete "section 517.02 or any other provision of"

Page 6, line 9, delete the second "allowing"

Page 6, line 10, delete "a child to enter into a marriage without the child's consent,"

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

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

Senators Skoglund, Marty, Neuville, Betzold and Clark introduced–

S.F. No. 2403: Referred to the Committee on Judiciary.

A bill for an act

relating to marriage; providing for the solemnization of Hmong marriages; imposing criminal penalties for knowingly facilitating the solemnization of a prohibited marriage; clarifying filing requirements for certain Quaker marriages; requiring the reporting of certain acts; amending Minnesota Statutes 2004, sections 517.05; 517.14; 517.18; Minnesota Statutes 2005 Supplement, section 626.556, subdivisions 2, 3.

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

Section 1. Minnesota Statutes 2004, section 517.05, is amended to read:

517.05 CREDENTIALS OF MINISTER OR MEJ KOOB.

Subdivision 1. **Minister.** Ministers of any religious denomination, before they are authorized to solemnize a marriage, shall file a copy of their credentials of license or ordination with the court administrator of the district court of a county in this state, who shall record the same and give a certificate thereof. The place where the credentials are recorded shall be endorsed upon and recorded with each certificate of marriage granted by a minister.

Subd. 2. **Mej Koob.** Before a Mej Koob is authorized to solemnize a marriage, the Mej Koob must file a signed statement with the court administrator in any county in the state indicating the person's intent to solemnize Hmong marriages as provided in section 517.18, subdivision 4a. The court administrator shall record the statement and give the person a certificate indicating the person's authority to solemnize those marriages. The court administrator shall give the person a copy of sections 517.02 and 517.03, and upon request shall answer questions regarding the Minnesota law relating to persons capable of entering into a marriage contract and prohibited marriages. The place where the statement

is recorded must be endorsed upon and recorded with each certificate of marriage granted by the Mej Koob.

Sec. 2. Minnesota Statutes 2004, section 517.14, is amended to read:

517.14 ILLEGAL MARRIAGE; FALSE CERTIFICATE; PENALTY.

A person who does any of the following is guilty of a misdemeanor:

(1) a person authorized by law to solemnize marriages who knowingly solemnizes a marriage contrary to the provisions of this chapter, or knowing of any legal impediment to the proposed marriage~~, or~~;

(2) a person who willfully makes a false certificate of any marriage or pretended marriage ~~is guilty of a misdemeanor~~; or

(3) a person who knowingly facilitates or assists in arranging the solemnization of a marriage contrary to the provisions of this chapter.

Sec. 3. Minnesota Statutes 2004, section 517.18, is amended to read:

517.18 MARRIAGE SOLEMNIZATION; SPECIAL PROVISIONS.

Subdivision 1. **Friends or Quakers.** ~~All~~ Marriages solemnized among the people called Friends or Quakers, in the form heretofore practiced and in use in their meetings, shall be valid and not affected by any of the foregoing provisions. ~~The clerk of the meeting in which such marriage is solemnized, within one month after any such marriage, shall deliver a certificate of the same to the local registrar of the county where the marriage took place, under penalty of not more than $100. Such certificate shall be filed and recorded by the court administrator under a like penalty. If such marriage does not take place in such meeting, such certificate shall be signed by the parties and at least six witnesses present, and shall be filed and recorded as above provided under a like penalty.~~

Subd. 2. **Baha'i.** Marriages may be solemnized among members of the Baha'i faith by the chair of an incorporated local Spiritual Assembly of the Baha'is, according to the form and usage of such society.

Subd. 3. **Buddhists; Hindus; Muslims.** Marriages may be solemnized among Buddhists, Hindus, or Muslims by the person chosen by a local Buddhist, Hindu, or Muslim association, according to the form and usage of their respective religions.

Subd. 4. **American Indians.** Marriages may be solemnized among American Indians according to the form and usage of their religion by an Indian Mide' or holy person chosen by the parties to the marriage.

Subd. 4a. **Hmong.** Marriages may be solemnized among Hmong by the Mej Koob, according to the form and usage of Hmong culture.

Subd. 5. **Construction of section.** Nothing in subdivisions 2 to ~~4~~ 4a shall be construed to alter the requirements of section 517.01, 517.09 or 517.10.

Subd. 6. **Filing of certificate.** (a) Within one month after a marriage is solemnized under subdivision 1, the clerk of the meeting shall deliver a certificate of the marriage to the district court of the county where the marriage took place. If the marriage did not take place at a meeting, the certificate must be signed by the parties and at least six witnesses to the marriage and delivered by one of the parties. Within one month after a marriage is solemnized in a manner specified in subdivisions 2 to 4a, the person who solemnized the marriage must deliver the certificate. The court administrator shall file and record the certificate.

(b) A person who does not deliver, file, or record a certificate as required under this subdivision is subject to a civil penalty of up to $100.

Subd. 7. **Application of other law.** Nothing in this section authorizes the solemnization of a marriage in violation of section 517.02 or any other provision of this chapter or solemnization of a marriage to which both parties do not voluntarily consent.

Sec. 4. Minnesota Statutes 2005 Supplement, section 626.556, subdivision 2, is amended to read:

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, a person who has a significant relationship to the child as defined in section 609.341, or a

person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in paragraph (d);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual

functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; ~~or~~

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture; or

(10) allowing a child to enter into a marriage in violation of section 517.02, allowing a child to enter into a marriage without the child's consent, or otherwise allowing solemnization of a marriage in accordance with the form and usage of a particular religion or culture in violation of these provisions, regardless of whether the marriage is solemnized in a manner authorized under chapter 517.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

(6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects

the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B; or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

(k) "Commissioner" means the commissioner of human services.

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

(o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

Sec. 5. Minnesota Statutes 2005 Supplement, section 626.556, subdivision 3, is amended to read:

Subd. 3. **Persons mandated to report.** (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; ~~or~~

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c)<u>; or</u>

<u>(3) a person who has authority to solemnize a marriage under chapter 517, who has received information regarding neglect, as defined in subdivision 2, paragraph (f), clause (10), while engaged in the performance of that function</u>.

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in

this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this subdivision, "immediately" means as soon as possible but in no event longer than 24 hours.

To: Senator Betzold, Chair

Committee on Judiciary

Senator Neuville,

Chair of the Subcommittee on Family Law, to which was referred

S.F. No. 2403: A bill for an act relating to marriage; providing for the solemnization of Hmong marriages; imposing criminal penalties for knowingly facilitating the solemnization of a prohibited marriage; clarifying filing requirements for certain Quaker marriages;requiring the reporting of certain acts; amending Minnesota Statutes 2004, sections 517.05; 517.14; 517.18; Minnesota Statutes 2005 Supplement, section 626.556, subdivisions 2, 3.

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

Page 1, line 13, strike "court administrator of the district court" and insert "local registrar"

Page 1, lines 18 and 20, delete "court administrator" and insert "local registrar"

Page 1, line 21, delete "The"

Page 1, delete lines 22 and 23

Page 1, line 24, delete everything before the first "The"

Page 2, line 33, delete the comma

Page 2, line 34, delete everything before the period

Page 3, lines 3 and 7, delete "one month" and insert "five days"

Page 3, line 5, delete "district court" and insert "local registrar"

Page 3, line 9, delete "court administrator" and insert "local registrar"

Page 3, line 14, delete "section 517.02 or any other provision of"

Page 6, line 9, delete the second "allowing"

Page 6, line 10, delete "a child to enter into a marriage without the child's consent,"

And when so amended that the bill be recommended to pass and be referred to the full committee.

.....
(Subcommittee Chair)

March 21, 2006 .....
(Date of Subcommittee action)

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

S.F. No. 3250: A bill for an act relating to coroners; modifying and updating the coroner and medical examiners law; providing criminal penalties;amending Minnesota Statutes 2004, sections 390.005; 390.01; 390.04; 390.11; 390.111; 390.15; 390.17; 390.21; 390.221; 390.23; 390.25; 390.31, subdivision 1; Minnesota Statutes 2005 Supplement, section 390.05; proposing coding for new law in Minnesota Statutes, chapter 390; repealing Minnesota Statutes 2004, sections 390.006; 390.06; 390.07; 390.16; 390.19; 390.20; 390.24; 390.31, subdivisions 2, 3; 390.33; 390.34; 390.35; 390.36.

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

Page 1, line 14, after "coroner" insert "or medical examiner" and before "A" insert " Each county must have a coroner or medical examiner."

Page 1, line 16, after the period, insert "A medical examiner must be appointed by the county board. The term of an appointed coroner or medical examiner must not be longer than five years."

Page 2, delete lines 3 and 4

Page 2, line 23, delete everything after the period

Page 2, delete line 24

Page 2, line 26, before "by" insert "training"

Page 2, line 27, after "office" insert ", unless the coroner has already obtained this training" and delete "The coroner or medical examiner need not be a resident of the county."

Page 2, after line 27, insert:

"(c) The coroner or medical examiner need not be a resident of the county."

Page 2, line 31, after "term" insert "of office"

Page 3, line 3, after "EXAMINER" insert "; SELECTION AND TERM"

Page 4, delete lines 4 and 5 and insert:

"The coroner or medical examiner is an independent official of the county, subject only to appointment, removal, and budgeting by the county board."

Page 4, line 12, before the period, insert ", but only for purposes of this chapter"

Page 5, line 11, delete "qualification" and insert "qualifications"

Page 5, line 13, before the comma, insert "of that county"

Page 6, line 5, reinstate the stricken "whose bodies are"

Page 6, line 35, before "investigation" insert "coroner's or medical examiner's"

Page 6, line 36, after "needed" insert "by the coroner or medical examiner"

Page 7, line 1, delete "Such authority shall not be subject to"

Page 7, line 2, delete "judicial order or injunction."

Page 7, delete lines 6 to 8 and insert "For deaths occurring within a facility licensed by the Department of Corrections, the coroner or medical examiner shall ensure that a forensic pathologist who is certified by the American Board of Pathology reviews each

death and performs an autopsy on all unnatural, unattended, or unexpected deaths and others as necessary."

Page 8, delete lines 4 to 6 and insert:

"Subd. 2a. **Deaths caused by fire; autopsies.** ~~The coroner shall conduct an autopsy in the case of any human death reported to the coroner by the state fire marshal or a chief officer under section 299F.04, subdivision 5, and apparently caused by fire.~~ The coroner or medical examiner shall conduct an autopsy or require that one be performed in the case of a death reported to the coroner or medical examiner by the state fire marshal or a chief officer under section 299F.04, subdivision 5, and apparently caused by fire, and in which the decedent is pronounced dead outside of a hospital in which identification of the decedent has not been confirmed. If the decedent has died in a hospital and identification is not in question, an autopsy may be performed or ordered by the coroner or medical examiner."

Page 9, line 5, delete "These"

Page 9, delete line 6

Page 9, line 7, delete "Act, sections 13.10 and 13.83." and insert "These records of the coroner or medical examiner are the property of the county and subject to chapter 13."

Page 9, line 15, after the period, insert "In a case in which a crime may be involved, the coroner or medical examiner shall promptly notify the law enforcement agency with jurisdiction over a criminal investigation of the death."

Page 10, line 21, after "staff" insert ", in coordination with the applicable law enforcement agency,"

Page 10, line 34, before "criminal" insert "potential" and delete "When further"

Page 10, lines 35 and 36, delete the new language and strike the old language

Page 12, delete section 14

Page 13, line 12, delete ", except law enforcement," and insert ", except law enforcement personnel,"

Page 14, line 1, delete everything after the period

Page 14, delete lines 2 to 6 and insert "Personal property, including wearing apparel, may be released to the person entitled to control the disposition of the body of the decedent or to the personal representative of the decedent. Personal property not otherwise released pursuant to this subdivision must be disposed of pursuant to section 525.393."

Page 14, line 20, before "shall" insert "or, for deaths occurring within a facility licensed by the Department of Corrections, the forensic pathologist who reviewed the death,"

Page 14, line 25, before "If" insert "The forensic pathologist who reviewed the death of an incarcerated person within a facility licensed by the Department of Corrections may file or amend the cause or manner of death information with the State Registrar."

Page 16, line 4, after "attorney" insert ", law enforcement agency,"

Page 16, line 5, delete "court or authorized attorney" and insert "person"

Page 16, line 7, delete "court, attorney, or agency" and insert "person"

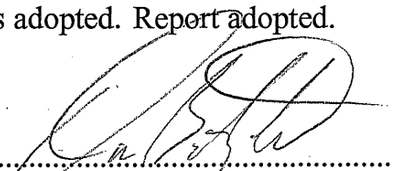
Page 16, line 23, delete everything after "sections" and insert "383A.36; 383B.225; 390.006; 390.06; 390.07; 390.16; 390.17; 390.19; 390.20;"

Page 16, line 24, before "390.33" insert "390.32;"

Renumber the sections in sequence

Amend the title accordingly

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



.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

Senator Ranum introduced–

S.F. No. 3250: Referred to the Committee on Judiciary.

A bill for an act

relating to coroners; modifying and updating the coroner and medical examiners law; providing criminal penalties; amending Minnesota Statutes 2004, sections 390.005; 390.01; 390.04; 390.11; 390.111; 390.15; 390.17; 390.21; 390.221; 390.23; 390.25; 390.31, subdivision 1; Minnesota Statutes 2005 Supplement, section 390.05; proposing coding for new law in Minnesota Statutes, chapter 390; repealing Minnesota Statutes 2004, sections 390.006; 390.06; 390.07; 390.16; 390.19; 390.20; 390.24; 390.31, subdivisions 2, 3; 390.33; 390.34; 390.35; 390.36.

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

Section 1. Minnesota Statutes 2004, section 390.005, is amended to read:

390.005 ELECTION OR APPOINTMENT, ELIGIBILITY; VACANCIES; REMOVAL.

Subdivision 1. ~~**County election**~~ **Selection of coroner.** A coroner ~~shall~~ may be elected ~~in each county,~~ as prescribed by section 382.01, ~~except as provided in this section~~ or appointed in each county.

Subd. 2. **Appointment by resolution.** ~~In a county where the office of coroner has not been abolished,~~ The board of county commissioners may, by resolution, state its intention to fill the office of coroner by appointment. The resolution must be adopted at least six months before the end of the term of the incumbent coroner, if elected. After the resolution is adopted, the board shall fill the office by appointing a person not less than 30 days before the end of the incumbent's term. The appointed coroner shall serve for a term of office determined by the board beginning upon the expiration of the term of the incumbent. The term must not be longer than four years.

If there is a vacancy in the elected office ~~in the county~~, the board may by resolution, state its intention to fill the office by appointment. When the resolution is adopted, the

board shall fill the office by appointment immediately. The coroner shall serve for a term determined by the board. The term must not be longer than four years.

Subd. 2a. **Medical examiner.** A county medical examiner shall be appointed by the board of county commissioners. The term must not be longer than four years.

Subd. 3. ~~**Educational requirements**~~ **Qualifications.** ~~A coroner must have successfully completed academic courses in pharmacology, surgery, pathology, toxicology, and physiology. However, if a board of county commissioners determines that the office of coroner shall not be elective and it cannot appoint any person meeting the educational qualifications as coroner, the board may:~~

~~(1) appoint any qualified person, whether or not a resident of the county; or~~

~~(2) if no qualified person can be found, appoint a person who is serving or has served as deputy coroner, whether or not a resident of the county.~~ (a) The medical examiner must be a forensic pathologist who is certified or eligible for certification by the American Board of Pathology. The medical examiner is an appointed public official in a system of death investigation in which the administrative control, the determination of the extent of the examination, need for autopsy and the filing of the cause and manner of death information with the state registrar pursuant to section 144.221 are all under the control of the medical examiner.

(b) The coroner must be a physician with a valid license in good standing under chapter 147, to practice medicine as defined under section 147.081, subd. 3. The coroner is a public official, elected or appointed, whose duty is to make inquiry into deaths in certain categories, determine the cause and manner of death, and file the information with the state registrar pursuant to section 144.221. The coroner must be credentialed by the American Board of Medicolegal Death Investigation within two years of taking office. The coroner must obtain additional training in medicolegal death investigation, such as by the American Board of Medicolegal Death Investigators, within four years of taking office. The coroner or medical examiner need not be a resident of the county.

Subd. 4. **Certain incumbents.** An incumbent coroner or medical examiner in office on ~~July 1, 1965 meets~~ the effective date of this section is hereby deemed to meet the qualifications prescribed by this section for the purpose of continuance in~~, reelection to, or appointment to~~ the office of coroner until the end of the current term, after which this statute will apply.

Subd. 5. **Vacancies, removal.** Vacancies in the office of coroner or medical examiner shall be filled according to sections 375.08 and 382.02, or under subdivision 1. ~~A~~ The medical examiner or appointed coroner may be removed ~~from office as provided by law.~~ by the county board during a term of office for cause shown after a hearing upon

due notice of written charges. The hearing shall be conducted in accordance with that county's human resources policy.

Sec. 2. **[390.0065] HENNEPIN COUNTY MEDICAL EXAMINER.**

Hennepin County shall use the following procedure to select the Hennepin County medical examiner: The Hennepin County Board shall designate three licensed physicians who shall constitute a Medical Examiner Board. One member shall be a dean or professor of the Department of Pathology of a Class A medical school as designated by the American Medical Association. Another member of the board shall be a member of the Minnesota Society of Pathologists. The third member shall be designated by the Hennepin County Medical Association from its membership. The Medical Examiner Board shall accept applications for the position of Hennepin County medical examiner when a vacancy exists in the office. Applications therefore shall be considered from doctors of medicine who are: (1) graduates of a medical school recognized by the American Medical Association or American Osteopathic Association, (2) members in good standing in the medical profession, (3) eligible for appointment to the staff of the Hennepin County Medical Center, and (4) certified or eligible for certification in forensic pathology by the American Board of Pathology. The Medical Examiner Board shall review the qualifications of the applicants and shall rank the applicants deemed qualified for the position and provide to the county board a report of the seven highest ranked applicants together with their qualifications. The county board shall appoint a county medical examiner from those listed in the report. The term of the examiner shall continue for four years from the date of appointment. Reappointment shall be made at least 90 days prior to the expiration of the term. If a vacancy requires a temporary appointment, the board of commissioners shall appoint a medical doctor on the staff of the county medical examiner's office to assume the duties of the medical examiner until an appointment can be made in compliance with the specified selection procedure. Actual and necessary expenses of the Medical Examiner Board shall be paid in accordance with sections 471.38 to 471.415.

Sec. 3. Minnesota Statutes 2004, section 390.01, is amended to read:

390.01 BOND AND INDEMNIFICATION .

~~Before taking office, the coroner shall post bond to the state in a penal sum set by the county board, not less than $500 nor more than $10,000. The coroner's bond is subject to the same conditions in substance as in the bond required by law to be given by the sheriff, except as to the description of the office.~~ The coroner or medical examiner shall be included in the bond held by the county for all appointed and elected county officials

and shall be defended and indemnified, pursuant to section 466.07. The ~~bond and~~ oath of office shall be recorded and filed with the county recorder.

Sec. 4. **[390.011] AUTONOMY.**

The office of the coroner or medical examiner is an independent agency of the county, subject only to appointment and budgeting by the county board.

Sec. 5. **[390.012] JURISDICTION.**

The coroner or medical examiner of the county in which a person dies or is pronounced dead shall have jurisdiction over the death, regardless of where any injury that resulted in the death occurred. The place where death is pronounced is deemed to be the place where death occurred. If the place of death is unknown but the dead body is found in Minnesota, the place where the body is found is considered the place of death. If the date of death is unknown, the date the body is found is considered the date of death. When a death occurs in a moving conveyance and the body is first removed in Minnesota, documentation of death must be filed in Minnesota and the place of death is considered the place where the body is first removed from the conveyance.

Sec. 6. Minnesota Statutes 2004, section 390.04, is amended to read:

390.04 ~~TO ACT WHEN SHERIFF A PARTY TO AN ACTION~~ PROVISION FOR TRANSFER OF JURISDICTION.

When the ~~sheriff is a party to an action or when a party, or a party's agent or attorney, files with the court administrator of the district court an affidavit stating that the party believes the sheriff,~~ coroner or medical examiner, because of partiality, prejudice, consanguinity, or interest, ~~will~~ is not ~~faithfully~~ able to perform the ~~sheriff's~~ coroner or medical examiner's duties ~~in an action commenced, or about to be commenced, the clerk shall direct process in the action to the coroner. The coroner shall perform the duties of the sheriff relative to the action in the same manner required for a sheriff.~~, the coroner or medical examiner shall have the authority to transfer jurisdiction to another coroner or medical examiner, as arranged by the county board.

Sec. 7. Minnesota Statutes 2005 Supplement, section 390.05, is amended to read:

390.05 ~~DEPUTIES~~ MEDICAL EXAMINER OR CORONER STAFF.

~~A~~ The coroner ~~shall~~ or medical examiner may appoint one or more ~~deputies.~~ assistant coroners or assistant medical examiners, as necessary to fulfill the duties of the office, subject to authorization by the county board. Such assistants shall have the same

qualifications as a coroner or medical examiner. When the coroner or medical examiner is absent or unable to act, ~~deputies~~ assistants shall have the same powers and duties and are subject to the same ~~liabilities as coroners. A deputy shall be appointed in writing. The oath and appointment shall be recorded with the county recorder. The deputy shall act by name as deputy coroner and hold office at the same time as the coroner.~~ limitations as the coroner or medical examiner. The assistants shall be appointed in writing, shall take an oath that shall be recorded and filed with the county recorder, and shall be included in the county bond. The assistant shall act by name as assistant coroner or medical examiner and hold office at the same time as the coroner or medical examiner.

A coroner or medical examiner may appoint one or more investigators, with such qualification as the coroner or medical examiner deems appropriate. Such investigators shall have the powers and duties that are delegated to them by the coroner or medical examiner. Unless they are public employees, investigators shall be appointed in writing and take an oath, shall be included in the county bond, and the oath and appointment shall be recorded and filed with the county recorder. Subject to authorization of the county board, assistants may be appointed to the unclassified service and investigators to the classified service of the county.

Sec. 8. **[390.061] MORGUE.**

Every county need not have a morgue, but there must be a system or process for receiving, storing, and releasing all dead bodies subject to this statute.

Sec. 9. Minnesota Statutes 2004, section 390.11, is amended to read:

390.11 INVESTIGATIONS ~~AND INQUESTS~~.

Subdivision 1. **~~Deaths requiring inquests and investigations~~ Reports of death.** ~~Except as provided in subdivision 1a, the coroner shall investigate and may conduct inquests in all human deaths of the following types:~~ All sudden or unexpected deaths and all deaths that may be due entirely or in part to any factor other than natural disease processes must be promptly reported to the coroner or medical examiner for evaluation. Sufficient information must be provided to the coroner or medical examiner. Reportable deaths include, but are not limited to:

(1) unnatural deaths, including violent deaths~~, whether apparently homicidal, suicidal, or accidental, including but not limited to deaths due to thermal, chemical, electrical, or radiational injury, and deaths due to criminal abortion, whether apparently self induced or not~~; arising from homicide, suicide, or accident;

(2) deaths due to a fire or associated with burns or chemical, electrical, or radiation injury;

(3) unexplained or unexpected perinatal and postpartum maternal deaths;

~~(2)~~ (4) deaths under suspicious, unusual, or ~~mysterious~~ unexpected circumstances;

~~(3)~~ (5) deaths of persons ~~whose bodies are~~ to be cremated~~, dissected, buried at sea,~~ or otherwise disposed of so that the bodies will later be unavailable for examination; ~~and~~

~~(4)~~ (6) deaths of inmates of public institutions and persons in custody of law enforcement officers who ~~are~~ have not been hospitalized primarily for organic disease ~~and whose deaths are not of any type referred to in clause (1) or (2).~~;

(7) deaths that occur during, in association with, or as the result of diagnostic, therapeutic, or anesthetic procedures;

(8) deaths due to culpable neglect;

(9) stillbirths of 20 weeks or longer gestation unattended by a physician;

(10) sudden deaths of persons not affected by recognizable disease;

(11) unexpected deaths of persons notwithstanding a history of underlying disease;

(12) deaths in which a fracture of a major bone such as a femur, humerus, or tibia has occurred within the past six months;

(13) deaths unattended by a physician occurring outside of a licensed health care facility or licensed residential hospice program;

(14) deaths of persons not seen by their physician within 120 days of demise;

(15) deaths of persons occurring in an emergency department;

(16) stillbirths or deaths of newborn infants in which there has been maternal use of or exposure to unprescribed controlled substances including street drugs or in which there is history or evidence of maternal trauma;

(17) unexpected deaths of children;

(18) solid organ donors;

(19) unidentified bodies;

(20) skeletonized remains;

(21) deaths occurring within 24 hours of arrival at a health care facility if death is unexpected;

(22) deaths associated with the decedent's employment;

(23) deaths of nonregistered hospice patients or patients in nonlicensed hospice programs; and

(24) deaths attributable to acts of terrorism.

The coroner or medical examiner shall determine the extent of the investigation, including whether additional investigation is needed, jurisdiction is assumed, or an autopsy will

be performed, notwithstanding any other statute. Such authority shall not be subject to judicial order or injunction.

Subd. 1a. **Commissioner of corrections; investigation of deaths.** ~~The commissioner of corrections may require that all Department of Corrections incarcerated deaths be reviewed by an independent, contracted, board-certified forensic pathologist.~~ Any county with jurisdiction over a Department of Corrections facility must have a board-certified forensic pathologist to review all Department of Corrections incarcerated deaths and autopsy all unnatural, unattended, or unexpected deaths and others as necessary.

Subd. 1b. **Hospice registration.** Each coroner and medical examiner shall establish a registration policy regarding hospice patients. If a hospice patient is determined to be properly preregistered, the coroner or medical examiner may treat the death as attended by a physician.

Subd. 2. ~~**Violent or mysterious deaths;**~~ **Autopsies.** The coroner or medical examiner may ~~conduct~~ order an autopsy, at the coroner or medical examiner's sole discretion, in the case of any human death referred to in subdivision 1, ~~clause (1) or (2),~~ when, in the judgment of the coroner ~~judges that~~ or medical examiner the public interest ~~requires~~ would be served by an autopsy~~, except that an autopsy must be conducted in all unattended inmate deaths that occur in a state correctional facility~~. The autopsy shall be performed without unnecessary delay. A report of the facts developed by the autopsy and findings of the person performing the autopsy shall be made promptly and filed in the office of the coroner or medical examiner. When further investigation is deemed advisable, a copy of the report shall be delivered to the county attorney. Every autopsy performed pursuant to this subdivision shall, whenever practical, be performed in the county morgue. Nothing herein shall require the coroner or medical examiner to order an autopsy upon the body of a deceased person if the person died of known or ascertainable causes or had been under the care of a licensed physician immediately prior to death or if the coroner or medical examiner determines the autopsy to be unnecessary.

Autopsies performed pursuant to this subdivision may include the removal, retention, testing, or use of organs, parts of organs, fluids or tissues, at the discretion of the coroner or medical examiner, when removal, retention, testing, or use may be useful in determining or confirming the cause of death, mechanism of death, manner of death, identification of the deceased, presence of disease or injury or preservation of evidence. Such tissue retained by the coroner or medical examiner pursuant to this subdivision shall be disposed of in accordance with standard biohazardous hospital and/or surgical material and does not require specific consent or notification of the legal next of kin. When removal, retention, testing, and use of organs, parts of organs, fluids, or tissues is deemed

beneficial, and is done only for research or the advancement of medical knowledge and progress, written consent or documented oral consent shall be obtained from the legal next of kin, if any, of the deceased person prior to the removal, retention, testing, or use.

~~Subd. 2a. **Deaths caused by fire; autopsies.** The coroner shall conduct an autopsy in the case of any human death reported to the coroner by the state fire marshal or a chief officer under section 299F.04, subdivision 5, and apparently caused by fire.~~

Subd. 3. ~~**Other deaths; autopsies;**~~ **Exhumation;** ~~**consent**~~ **disinterment.** The coroner ~~may conduct an autopsy in the case of any human death referred to in subdivision 1, clause (3) or (4),~~ or medical examiner may exhume any human body and perform an autopsy on it in the case of any human death referred to in subdivision 1 when the coroner or medical examiner judges that the public interest requires an autopsy. No ~~autopsy~~ exhumation shall be conducted unless the surviving ~~spouse, or~~ legal next of kin ~~if there is no surviving spouse,~~ consents to it, or the district court of the county where the body is located or buried~~, upon notice as the court directs, enters an order authorizing an autopsy or an exhumation and autopsy~~ orders it. Notice of such exhumation shall be given as directed by the district court. Application for an order may be made by the coroner, medical examiner, or ~~by the~~ county attorney of the county where the body is located or buried, and shall be granted upon a showing that the court deems appropriate.

Subd. 4. **Assistance of medical specialists.** If during an investigation the coroner or medical examiner believes the assistance of pathologists, toxicologists, ~~deputy coroners,~~ laboratory technicians, or other medical, scientific, or forensic experts is necessary to determine or confirm the cause or manner of death, identification, time of death, or to address other issues requiring expert opinion, the coroner ~~shall~~ or medical examiner may obtain their assistance.

Subd. 5. **Inquest.** An inquest into a death may be held at the request of the medical examiner and the county attorney or the coroner and the county attorney. An inquest is optional and the coroner or medical examiner may investigate and certify a death without one. The coroner or medical examiner and county attorney may decide how to empanel the inquest. Inquest records will be made public, but the record and report of the inquest proceedings may not be used in evidence in any civil action arising out of the death for which an inquest was ordered. ~~Before an inquest is held, the coroner shall notify the county attorney to appear and examine witnesses at the inquest.~~

Whenever the decision is made to hold an inquest, the county attorney may issue subpoenas for witnesses and enforce their attendance. The persons served with subpoenas shall be allowed the same compensation and be subject to the same enforcement and penalties as provided by Rule 22 of the Minnesota Rules of Criminal Procedure.

Subd. 6. **Records kept by coroner or medical examiner.** The coroner or medical examiner shall keep full and complete records, properly indexed ~~records,~~ giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death, and all other ~~relevant~~ available information concerning the death~~:~~ that the coroner or medical examiner considers pertinent. These records are the property of the county and are subject to the Minnesota Data Practices Act, sections 13.10 and 13.83. These records shall be kept at the coroner's or medical examiner's office, unless no storage space is available. They shall then be kept with official county records and only released in accordance with the Data Practices Act. Records shall be kept in accordance with section 15.17.

Subd. 7. ~~**Reports**~~ **Duty to report.** ~~(a)~~ Deaths of the types described in this section must be promptly reported for investigation to the coroner or medical examiner by the law enforcement officer, attending physician, health care professional, mortician or funeral director, person in charge of the public institutions referred to in subdivision 1, or ~~other person with knowledge of the death.~~ anyone who discovers a deceased person.

Subd.7a. **Records and other material available to coroner or medical examiner.** ~~(b) For the purposes of this section, health-related records or data on a decedent,~~ Except for health data defined in section 13.3805, subdivision 1, paragraph (a), clause (2), health-related records or data on a decedent whose death is being investigated under this section, ~~whether the records or data are recorded or unrecorded, including but not limited to those concerning medical, surgical, psychiatric, psychological, or any other consultation, diagnosis, or treatment, including medical imaging,~~ shall be made promptly available to the coroner or medical examiner, upon the coroner's or medical examiner's written request, by ~~a~~ any person, agency, entity, or organization having custody of, possession of, access to, or knowledge of the records or data. This provision includes records and data, whether recorded or unrecorded, including but not limited to, records and data, including medical imaging, concerning medical, surgical, psychiatric, psychological, chemical dependency, or any other consultation, diagnosis, or treatment. In cases involving a stillborn infant or the death of a fetus or infant less than one year of age, the prenatal records on the decedent's mother shall also be made available promptly to the coroner or medical examiner. The coroner or medical examiner shall pay the reasonable costs of copies of records or data so provided ~~to the coroner~~ under this section. Data collected or created pursuant to this subdivision relating to any psychiatric, psychological, or mental health consultation with, diagnosis of, or treatment of the decedent whose death is being investigated shall remain confidential or protected nonpublic data, except that the coroner's or medical examiner's final summary report may contain a summary

of, or references to, such data. Where records of a decedent become part of the medical examiner's or coroner's file, they are not subject to subpoena or a request for production directed to the medical examiner or coroner. Body fluids, slides, tissue, organ specimens, radiographs, monitor records, video or other recordings, and any other material or article of diagnostic value obtained from the decedent prior to death, shall be made available to the coroner or medical examiner upon request. Notwithstanding the provisions of sections 13.384 and 595.02, the coroner or medical examiner shall have the power to subpoena any and all documents, records, including medical records, and papers deemed useful in the investigation of a death.

Subd. 7b. **Records released by coroner or medical examiner.** Records and reports, including those of autopsies performed, generated, and certified by the coroner or medical examiner shall be admissible as evidence in any court or grand jury proceeding. The admissibility of such evidence under this subdivision shall not include statements made by witnesses or other persons unless otherwise admissible.

Subd. 8. **Investigation procedure; coroner or medical examiner in charge of body.** Upon notification of ~~a~~ the death ~~subject to~~ of any person as defined in this section, the coroner or ~~deputy shall~~ medical examiner staff or their designee may proceed to the body, take charge of it, and~~;~~ arrange for transfer of it, when appropriate. This provision also applies to bones, body parts, and specimens that may be human remains. Discovery of such bones, body parts, and specimens must be promptly reported to the coroner or medical examiner. When necessary, the coroner or medical examiner staff may order that there be no interference with or compromise of the body or the scene of death. In the event a person is transported to an emergency vehicle or facility and pronounced dead, the scene of death shall include the original location of the decedent when first discovered to be ill, unresponsive, or stricken prior to removal by emergency medical personnel. Any person violating such an order is guilty of a gross misdemeanor. The coroner or medical examiner staff shall make inquiry regarding the cause and manner of death and, in cases that fall under the medical examiner's or coroner's jurisdiction, prepare written findings together with the report of death and its circumstances, which shall be filed in the office of the coroner or medical examiner.

Subd. 9. **Criminal act report.** ~~On coming to believe that the death may have resulted from a criminal act,~~ The coroner or ~~deputy~~ medical examiner shall deliver ~~a signed~~ to the county attorney copies of reports or other information created by the coroner's or medical examiner's office in any cases of a criminal nature. When further investigation is deemed advisable, a copy of the report of investigation, autopsy, or inquest shall be delivered to the county attorney.

Subd. 10. ~~Sudden~~ **Infant death.** If a child under the age of two years dies suddenly and unexpectedly ~~under circumstances indicating that the death may have been caused by sudden infant death syndrome, the coroner, medical examiner, or personal physician shall notify the child's parents or guardian that an autopsy is essential to establish the cause of death as sudden infant death syndrome. If an autopsy reveals that sudden infant death syndrome is the cause of death, that fact must be stated in the autopsy report.~~, the parents or guardian of the child shall be promptly notified of the ~~cause of death and of the~~ availability of counseling services.

~~Subd. 11. **Autopsy fees.** The coroner may charge a reasonable fee to a person requesting an autopsy if the autopsy would not otherwise be conducted under subdivision 1, 2, or 3.~~

Subd. 12. **Authorized removal of ~~the~~ brain.** If the coroner or medical examiner is informed by a physician ~~or pathologist~~ that a ~~dead person~~ decedent is suspected of having had Alzheimer's disease, the coroner ~~shall~~ or medical examiner may authorize the removal of the brain ~~of the dead person~~ for the purposes of sections 145.131 and 145.132.

Sec. 10. Minnesota Statutes 2004, section 390.111, is amended to read:

390.111 EXPENSES AND COMPENSATION.

The county board ~~may allow~~ is responsible for the reasonable and necessary compensation and expenses of the coroner or ~~deputies incurred for telephone tolls, telegrams, postage, the cost of transcribing the testimony taken at an inquest, and other expenses incurred solely for the officers' official business under this chapter.~~ medical examiner, assistants, investigators, and other medical specialists.

Sec. 11. Minnesota Statutes 2004, section 390.15, is amended to read:

390.15 ~~WITNESSES;~~ FEES.

The coroner or medical examiner may ~~issue subpoenas for witnesses, returnable immediately or at a specified time and place. The persons served with the subpoenas shall be allowed the fees, the coroner shall enforce their attendance, and they shall be subject to the penalties provided by statute or the Rules of Criminal Procedure.~~ charge a fee for cremation approval, duplication of reports, and other administrative functions to recover reasonable expenses, subject to county board approval.

Sec. 12. **[390.151] ORGAN AND TISSUE DONATION.**

The coroner or medical examiner may facilitate donation of organs and tissues in compliance with the Uniform Anatomical Gift Act, sections 525.921 to 525.9224.

Sec. 13. **[390.152] CREMATION APPROVAL.**

After investigating deaths of persons who are to be cremated, the coroner or medical examiner may give approval for cremation and shall record such approval by either signing a cremation authorization form, or electronically through the centralized electronic system for the processing of death records established by the state registrar. It shall be a misdemeanor to perform a cremation without such approval.

Sec. 14. Minnesota Statutes 2004, section 390.17, is amended to read:

390.17 TESTIMONY~~; FILING~~.

~~The testimony of a witness examined at an inquest must be put in writing by the coroner or under the coroner's direction and signed by the witness. The coroner shall then file the testimony, together with a record of all proceedings, in the office of the court administrator of the district court of the county.~~ Whenever requested by the county attorney of the county of the office's jurisdiction, the medical examiner or coroner and staff shall appear and testify before a grand jury and in criminal cases; unless specified in a contractual agreement, salaried medical examiners or coroners and staff shall testify without fees or additional compensation. Should testimony be requested in civil cases, the individual consultant or office may charge for the professional time expended or reserved. When the physician who performed the autopsy is unavailable, another physician from that office may testify.

Sec. 15. Minnesota Statutes 2004, section 390.21, is amended to read:

390.21 DISPOSITION; BURIAL.

~~When a coroner holds an inquest upon view of the dead body of any person unknown, or, being called for that purpose, does not think it necessary, on view of the body, that an inquest be held, the coroner shall have the body decently buried. All expenses of the inquisition and burial shall be paid by the county where the dead body is found.~~ After an investigation has been completed, including an autopsy if one is done, the body shall be released promptly to the person or persons who have the right to control the disposition of the body. Section 149A.80, subdivision 2, shall control. If the identity of the deceased person is unknown, or if the body is unclaimed, the medical examiner or coroner shall provide for dignified burial or storage of the remains. Dignified burial shall not include cremation, donation for anatomic dissection, burial at sea, or other disposition that will make the body later unavailable. The county where the dead body is found shall pay reasonable expenses of the burial. If an estate is opened within six years and claim

made for the property or proceeds of the sale of the property of the decedent, the county shall be reimbursed the amount spent on burial, with interest at the statutory rate.

Sec. 16. Minnesota Statutes 2004, section 390.221, is amended to read:

390.221 BODIES; EFFECTS; CUSTODY.

A person may not ~~remove~~ move, interfere with, or handle the body or the effects of ~~any person~~ a decedent subject to an investigation by the ~~county~~ coroner or medical examiner except upon order of the coroner ~~or~~, medical examiner, assistant, or ~~deputy~~ authorized investigator. The coroner or medical examiner shall take charge of the effects found on or near the body of a deceased person and dispose of them as the ~~district court directs by written order~~ directed under section 390.225. If a crime is suspected in connection with the death of a deceased person ~~is suspected~~, the coroner or medical examiner may prevent any person, except law enforcement, from entering the premises, rooms, or buildings, and shall have the custody of objects that the coroner or examiner deems material evidence in the case. The coroner or medical examiner shall release any property or articles needed for any criminal investigation to law enforcement officers conducting the investigation, except as noted in section 390.225, subdivision 2. A ~~willful~~ knowing violation of this section is a gross misdemeanor.

Sec. 17. **[390.225] PROPERTY.**

Subdivision 1. **Procedure.** The coroner or medical examiner may take possession of all articles that may be useful in establishing the cause or manner of death, identification, or next of kin of the deceased, and, if taken, mark them for identification, make an inventory, and retain them securely until they are no longer needed for evidence or investigation. Except as noted in subdivision 2, the coroner or medical examiner shall release any property or articles needed for any criminal investigation to law enforcement officers conducting the investigation.

Subd. 2. **Retention of property.** When a reasonable basis exists for not releasing property or articles to law enforcement officers, the coroner or medical examiner shall consult with the county attorney. If the county attorney determines that a reasonable basis exists for not releasing the property or articles, the coroner or medical examiner may retain them. The coroner or medical examiner shall obtain written confirmation of this opinion and keep a copy in the decedent's file.

Subd. 3. **Release of property.** With the exception of firearms, when property or articles are no longer needed for the investigation or as evidence, the coroner or medical examiner shall release such property or articles to the person or persons entitled

to them. Wearing apparel and property of nominal value may be surrendered by the coroner or medical examiner to the person or person entitled to control the disposition of the decedent. When personal property of more than nominal value has come into the possession of the coroner or medical examiner, and has not otherwise been released pursuant to this subdivision, the coroner or medical examiner shall dispose of the property according to section 525.393.

Subd. 4. **Firearms.** The coroner or medical examiner shall release all firearms, when no longer needed, to the law enforcement agency handling the investigation.

Subd. 5. **Property of unknown decedents.** If the name of the decedent is not known, the coroner or medical examiner shall release such property to the county for disposal or sale. If the unknown decedent's identity is established and if a representative shall qualify within six years from the time of such sale, the county administrator, or a designee, shall pay the amount of the proceeds of the sale to the representative on behalf of the estate upon order of the court. If no order is made within six years, the proceeds of the sale shall become a part of the general revenue of the county.

Sec. 18. Minnesota Statutes 2004, section 390.23, is amended to read:

390.23 DEATH RECORDS ~~OF VIOLENT OR MYSTERIOUS DEATH.~~

No person, other than the county coroner~~;~~ or medical examiner~~, judge exercising probate jurisdiction, or Department of Corrections' independent, contracted, board-certified forensic pathologist,~~ shall ~~issue a record~~ file or amend the cause or manner of death information with the state registrar in cases of likely or suspected accidental, suicidal, homicidal, violent, or mysterious deaths~~, including suspected homicides,~~ occurring in the county. ~~The Department of Corrections' independent, contracted, board-certified forensic pathologist must issue the certificate of death in all Department of Corrections-incarcerated deaths.~~ If there is reasonable proof that a death has occurred, but no body has been found, a judge may direct the state registrar to register the death with the fact of death information provided by the court order according to section 144.221 subdivision 3.

Sec. 19. Minnesota Statutes 2004, section 390.25, is amended to read:

390.25 ~~FINGERPRINTING OF~~ UNIDENTIFIED DECEASED ~~PERSON~~ PERSONS.

Subdivision 1. **Attempts to identify.** ~~Each coroner shall have fingerprinted all deceased persons in the county whose identity is not immediately established. Within 24 hours after the body is found, the coroner shall forward to the Bureau of Criminal~~

~~Apprehension the fingerprints, fingerprint records, and other identification data. The superintendent of the bureau shall prescribe the form of these reports. The duties are in addition to those imposed on the coroner by section 525.393.~~ The coroner or medical examiner shall make reasonable attempts to identify the deceased person promptly. These actions may include obtaining: photographs of the body; fingerprints from the body, if possible; formal dental examination by a dentist with forensic training, with charting and radiographs; full body radiographs; specimens such as tissue, blood, bone, teeth, and/or hair, suitable for DNA analysis or other identification techniques; blood type; photographs of items such as clothing and property found on and with the body; and anthropological determination of age, race, sex, and stature, if appropriate. All of these actions shall be taken prior to the disposition of any unidentified deceased person.

Subd. 2. **Report to BCA.** After 60 days, the coroner or medical examiner shall provide to the Bureau of Criminal Apprehension missing persons clearinghouse information to be entered into federal and state databases that can aid in the identification, including the National Crime Information Center database. The coroner or medical examiner shall provide to the Bureau of Criminal Apprehension specimens suitable for DNA analysis. DNA profiles and information shall be entered by the Bureau of Criminal Apprehension into federal and state DNA databases within five business days after the completion of the DNA analysis and procedures necessary for the entry of the DNA profile.

Subd. 3. **Other efforts to identify.** Nothing in this section shall be interpreted to preclude any medical examiner or coroner from pursuing other efforts to identify unidentified deceased persons, including publicizing information, descriptions, or photographs that may aid in the identification, allow family members to identify missing persons, and seek to protect the dignity of the missing persons.

Subd. 4. **Preservation of data.** The coroner or medical examiner may preserve and retain photographs, specimens, documents, and other data such as dental records, radiographs, fingerprints, or DNA, for establishing or confirming the identification of bodies or for other forensic purposes deemed appropriate under the jurisdiction of the office. Upon request by an appropriate agency, or upon the coroner or medical examiner's own initiative, the coroner or medical examiner may make the information available to aid in the establishment of the identity of a deceased person.

Subd. 5. **Notice to state archaeologist.** After the coroner or medical examiner has completed the investigation, the coroner or medical examiner shall notify the state archaeologist, according to section 307.08, of all unidentified human remains found outside of platted, recorded, or identified cemeteries and in contexts which indicate antiquity of greater than 50 years.

Sec. 20. **[390.251] REQUEST FOR EXAMINATIONS.**

The coroner or medical examiner may, when requested, make physical examinations and tests incident to any matter of a criminal nature under consideration by the district court or county attorney or publicly appointed criminal defense counsel, and shall deliver a copy of a report of such tests and examinations to the court or authorized attorney making the request. Such an examination does not establish a doctor-patient relationship. The court, attorney, or agency making the request shall pay the cost of such examinations and tests.

Sec. 21. **[390.252] CONTRACTS FOR SERVICES.**

A county board may contract to perform coroner or medical examiner services with other units of government or their agencies under a schedule of fees approved by that board.

Sec. 22. Minnesota Statutes 2004, section 390.31, subdivision 1, is amended to read:

Subdivision 1. ~~**Purpose**~~ **Expiration.** Those counties currently using the "simplified investigations of death," sections 390.31 to 390.35 ~~provide a simplified system for the investigation of the death of any person when the county attorney determines that an investigation is necessary and provide for professional assistance to those making the investigation. It is declared to be in the public interest for medical doctors to conduct the medical investigations deemed necessary under the supervision of the county attorney and, if a trial is deemed necessary, that it be held in a court of record.~~ may continue to do so until December 31, 2007, after which this statute will apply.

Sec. 23. **REPEALER.**

Minnesota Statutes 2004, sections 390.006; 390.06; 390.07; 390.16; 390.19; 390.20; 390.24; 390.31, subdivisions 2 and 3; 390.33; 390.34; 390.35; and 390.36, are repealed.

Senator ..... moves to amend S.F. No. 3250 as follows:

Page 5, line 13, before the comma, insert "of that county"

Page 6, line 35, before "investigation" insert "coroner's or medical examiner's"

Page 6, line 36, after "needed" insert "by the coroner or medical examiner"

Page 9, line 15, after the period, insert "In a case in which a crime may be involved, the coroner or medical examiner shall promptly notify the law enforcement agency with jurisdiction over a criminal investigation of the death."

Page 10, line 21, after "staff" insert ", in coordination with the applicable law enforcement agency,"

Page 10, line 34, before "criminal" insert "potential" and delete "When further"

Page 10, delete lines 35 and 36

Page 16, line 4, after "attorney" insert ", law enforcement agency,"

Page 16, line 7, delete "court, attorney, or agency" and insert "person"

Senator ..... moves to amend S.F. No. 3250 as follows:

Page 1, line 14, after "coroner" insert "or medical examiner" and after the period, insert "Each county must have a coroner or medical examiner."

Page 1, line 16, after the period, insert "A medical examiner must be appointed by the county board. The term of an appointed coroner or medical examiner must not be longer than five years."

Page 2, delete lines 3 and 4

Page 2, line 23, delete everything after the period

Page 2, delete line 24

Page 2, line 26, before "by" insert "training"

Page 2, line 27, after "office" insert ", unless the coroner has already obtained this training" and delete "The coroner or medical examiner need not be a resident of the county."

Page 2, after line 27, insert:

"(c) The coroner or medical examiner need not be a resident of the county."

Page 2, line 31, after "term" insert "of office"

Page 3, line 3, after "EXAMINER" insert "; SELECTION AND TERM"

Page 4, delete lines 4 and 5 and insert:

"The coroner or medical examiner is an independent official of the county, subject only to appointment, removal, and budgeting by the county board."

Page 4, line 12, before the period, insert ", but only for purposes of this chapter"

Page 5, line 11, delete "qualification" and insert "qualifications"

Page 7, delete lines 6 to 8 and insert "For deaths occurring within a facility licensed by the Department of Corrections, the coroner or medical examiner shall ensure that a forensic pathologist who is certified by the American Board of Pathology reviews each death and performs an autopsy on all unnatural, unattended, or unexpected deaths and others as necessary."

Page 8, delete lines 4 to 6 and insert:

"Subd. 2a. **Deaths caused by fire; autopsies.** ~~The coroner shall conduct an autopsy in the case of any human death reported to the coroner by the state fire marshal or a chief officer under section 299F.04, subdivision 5, and apparently caused by fire.~~ The coroner or medical examiner shall conduct an autopsy or require that one be performed in the case of a

death reported to the coroner or medical examiner by the state fire marshal or a chief officer under section 299F.04, subdivision 5, and apparently caused by fire, and in which the decedent is pronounced dead outside of a hospital in which identification of the decedent has not been confirmed. If the decedent has died in a hospital and identification is not in question, an autopsy may be performed or ordered by the coroner or medical examiner."

Page 9, line 5, delete "These"

Page 9, delete line 6

Page 9, line 7, delete "Act, sections 13.10 and 13.83." and insert "These records of the coroner or medical examiner are the property of the county and subject to chapter 13."

Page 12, delete section 14

Page 13, line 12, delete ", except law enforcement," and insert ", except law enforcement personnel,"

Page 14, line 1, delete everything after the period

Page 14, delete lines 2 to 6 and insert "Personal property, including wearing apparel, may be released to the person entitled to control the disposition of the body of the decedent or to the personal representative of the decedent. Personal property not otherwise released pursuant to this subdivision must be disposed of pursuant to section 525.393."

Page 14, line 20, before "shall" insert "or, for deaths occurring within a facility licensed by the Department of Corrections, the forensic pathologist who reviewed the death,"

Page 14, line 25, before "If" insert "The forensic pathologist who reviewed the death of an incarcerated person within a facility licensed by the Department of Corrections may file or amend the cause or manner of death information with the State Registrar."

Page 16, delete line 7 and insert "The district court, county attorney, publicly appointed criminal defense counsel, or agency making the request shall pay the cost of the examinations"

Page 16, line 23, delete everything after "sections" and insert "383A.36; 383B.225; 390.006; 390.06; 390.07; 390.16; 390.17; 390.19; 390.20;"

Page 16, line 24, before "390.33" insert "390.32;"

Information from the Minnesota Coroners and Medical Examiners Association

Medical Examiners and Coroners

H.F. 3636 / S.F. 3250

Description

The purpose of this bill is to update and re-codify Minnesota Statutes 390 and 383B.225, which outline the responsibilities of county coroners and medical examiners. The statutes governing medicolegal death investigations in Minnesota are complex and anachronistic with many outdated and obsolete provisions. It has been decades since there was a systematic revision of Chapter 390. The goal of the Minnesota Coroners and Medical Examiners Association is to develop a unified and universal law that is both effective and efficient for all of Minnesota's counties.

Historical Background

There are currently three statutory provisions for coroners and medical examiners:
Chapters 390.005—390.26 are essentially the original coroner statute which has been in place since territorial days.
In 1965, the office of the Hennepin County Medical Examiner was created under 383B.225.
Also in 1965, educational requirements were added to Chapter 390, so currently most Minnesota coroners and medical examiners are physicians.
In 1971, the "Simplified Investigations of Death", 390.31—390.35, was created. This took away the independent investigative function from the coroner and gave control to the county sheriff and county attorney. Since most deaths investigated by coroners and medical examiners are non-criminal, this is not a wise use of resources, and it abandons the parallel death investigation that has been a cornerstone of such inquiries for centuries.

Current Public Expectations

In 1997 the U.S. Department of Justice published National Guidelines for Death Investigation. Since then, the National Association of Medical Examiners and the American Board of Medicolegal Death Investigators have promoted standards for death investigation and this statutory revision is an effort to bring Minnesota into compliance with minimum national standards. Public awareness and expectations have been raised by such television shows as "CSI", "Crossing Jordan", and "Law and Order", to name a few. Ideally, each county would have a board-certified forensic pathologist directing medicolegal death investigation. However, given the limited number of forensic pathologists, this re-codification attempts to improve the level of education and training required for coroners and to insure systematic investigation of deaths.

Specifics

Qualifications and Terminology
"Coroner" would be a MD or DO (Doctor of Osteopathy) with training in standard death investigation practices and "Medical Examiner" would be a forensic pathologist. This brings Minnesota more in line with how these terms are used elsewhere. The coroner would no longer be forced to perform the duties of a disabled or disqualified sheriff and would not have the same power as a county or municipal judge or be able to commit someone to the county jail, all of which are in the current coroner statute!

Medical examiner or coroner staff
Defines the qualifications, duties, and authority of assistants and investigators. Currently deputies have the same powers as the coroner, which is not appropriate for non-physician death investigators.

Reports of Death
Clarifies the types of deaths that must be reported to the coroner or medical examiner. The list is expanded from the current statute, better addresses public health concerns, provides standards, promotes uniformity and insures that unexpected deaths are appropriately investigated.

Hospice
Enables persons who have chosen to die at home under the care of a hospice program to do so without undue interference, while providing a systematic level of investigation.

Inquests
Simplifies and modernizes the procedure for an inquest, although these are rarely held.

Unidentified deceased persons
Each year families in the United States have to cope with the disappearance of a loved one who is never found. The Minnesota Coroners and Medical Examiners Association, in partnership with the Bureau of Criminal Apprehension, developed a protocol in compliance with the President's DNA Initiative on Identifying the Missing for coroners and medical examiners to follow, in an effort to minimize the number of people who remain unidentified.

Property
Defines the proper handling and disposal of the property of decedents.

Supporters

Minnesota Coroners and Medical Examiners Association
Minnesota Medical Association
Minnesota Funeral Directors Association
Minnesota County Attorneys Association

March 2006
Minnesota Coroners and Medical Examiners Association
530 Chicago Avenue
Minneapolis MN 55415

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State of Minnesota

S.F. No. 3250 - Coroners and Medical Examiners-Judiciary Issues

Author: Senator Jane B. Ranum

Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394) K.P.

Date: March 21, 2006

This bill modifies and updates the law relating to coroners and medical examiners. Following is a summary of the judiciary issues.

Section 9 deals with the investigation of sudden or unexpected deaths or other deaths that may not be due to natural causes.

Subdivision 1 specifies more types of deaths that are reportable. The coroner or medical examiner must determine that extent of the investigation, including whether an additional investigation is needed, jurisdiction is assumed, or an autopsy will be performed. This authority is not subject to judicial order or injunction.

Subdivision 2 deals with autopsies. Tissues retained as part of an autopsy must be disposed of in accordance with standard biohazardous hospital or surgical material and the specific consent or notification of the legal next of kin is not required. Written or oral consent would be necessary if the removal, testing, and use is done only for research or medical knowledge purposes.

Subdivision 5 deals with inquests. Language is added specifying that inquest records must be public. The county attorney may subpoena witnesses.

Subdivision 6 deals with records kept by a coroner or medical examiner. Language is added specifying that the records are the property of the county and subject to the Data Practices Act. They must be kept at the coroner's or medical examiner's office, unless no storage space is available. They must be kept with official county records and released only in

accordance with the Data Practices Act and retained in accordance with **section 15.17** (the official records statute).

Subdivision 7a deals with records and other material available to the coroner or medical examiner and the treatment of records and data. The requirement that all data, except health data, be provided to the coroner or medical examiner as part of an investigation is expanded to include more specific types of records. In cases involving a still-born infant or death of a fetus or infant less than one year of age, prenatal records on the decedent's mother must also be made available. Records of a decedent that become part of the file are not subject to subpoena or a request for production of the records. Specified biological samples must be made available. Notwithstanding **section 13.384** (the medical data statute) and **section 595.02** (the witness privilege statute), the coroner or medical examiner has the power to subpoena any and all documents and records deemed useful in the investigation of a death.

Subdivision 7b provides that records and reports of the coroner or medical examiner must be admissible as evidence in any court or grand jury proceeding, provided that the admissibility of this evidence does not include statements made by witnesses or other persons unless otherwise admissible.

Section 12 provides that the coroner or medical examiner may facilitate donation of organs and tissues in compliance with the Uniform Anatomical Gift Act.

Section 14 amends the statute dealing with testimony by the coroner or medical examiner. When testimony is requested in civil cases, the individual or office may charge for the professional time expended or reserved. If the physician who performed the autopsy is unavailable, another physician from the office may testify.

Section 17 authorizes the coroner or medical examiner to take possession of various forms of property that may be useful in establishing the cause or manner of death until they are no longer needed for evidence or investigation. Special provisions are included with respect to retention and release of property, firearms, and property of unknown decedents.

Section 19 amends the statute dealing with unidentified deceased persons. More specific requirements are included with respect to identification of a body and obtaining the assistance of the Bureau of Criminal Apprehension in obtaining information based on fingerprints and DNA analysis. Requirements are included with respect to the preservation of data.

KP:cs

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

S.F. No. 1426: A bill for an act relating to environment; adopting the Uniform Environmental Covenants Act; amending Minnesota Statutes 2004, section 115B.17, subdivision 15; proposing coding for new law as Minnesota Statutes, chapter 114D.

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

Delete everything after the enacting clause and insert:

"Section 1. **[114D.01] SHORT TITLE.**

This chapter may be cited as the Uniform Environmental Covenants Act.

Sec. 2. **[114D.05] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the definitions in this subdivision have the meanings given.

Subd. 2. **Activity and use limitations.** "Activity and use limitations" means restrictions or obligations with respect to real property that are associated with an environmental response project.

Subd. 3. **Common interest community.** "Common interest community" means a common interest community as defined in chapter 515B.

Subd. 4. **Environmental agency.** "Environmental agency" means the Pollution Control Agency, Agriculture Department, or another state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

Subd. 5. **Environmental covenant.** "Environmental covenant" means a servitude created under this chapter that imposes activity and use limitations.

Subd. 6. **Environmental response project.** "Environmental response project" means a plan or work performed to clean up, eliminate, investigate, minimize, mitigate, or prevent the release or threatened release of contaminants affecting real property in order to protect public health or welfare or the environment, including:

(1) response or corrective actions under federal or state law, including chapters 115B, 115C, 115E, and 116, and the Comprehensive Environmental Response, Compensation and Liability Act, United States Code, title 44, section 9601, et seq.;

(2) corrective actions or response to agricultural chemical incidents under chapters 18B, 18C, 18D, and 18E; and

(3) closure, contingency, or corrective actions required under rules or regulations applicable to waste treatment, storage, or disposal facilities or to above or below ground tanks.

Subd. 7. **Holder.** "Holder" means any person identified as a holder of an environmental covenant as specified in section 114D.10, paragraph (a).

Subd. 8. **Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, political subdivision or special purpose unit of government, agency, or instrumentality of the state or federal government, or any other legal or commercial entity.

Subd. 9. **Record.** "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 10. **Recorded.** "Recorded" means recorded with the county recorder or registrar of title, as applicable, in each county where the real property is located.

Subd. 11. **State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Sec. 3. **[114D.10] NATURE OF RIGHTS; ROLE OF ENVIRONMENTAL AGENCY; SUBORDINATION OF INTERESTS.**

(a) Any person, including a person that owns an interest in the real property subject to the environmental convenant, the environmental agency, or any other political subdivision or unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property. The holder is the grantee of the real property interest conveyed under an environmental covenant.

(b) Unless an environmental agency is a holder, any right that the agency may have with respect to an environmental covenant does not constitute an interest in real property. Approval of an environmental covenant does not make the environmental agency a holder unless it has authority under law other than this chapter to acquire an interest in real property for purposes related to an environmental response project and it is expressly identified as a holder in the environmental covenant.

(c) An environmental agency is bound by any obligation it assumes in an environmental covenant, but an environmental agency does not assume obligations merely by signing an environmental covenant. As provided in section 114D.15, an environmental covenant is not valid unless signed by the environmental agency and the environmental agency may set reasonable conditions for its approval of an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person expressly assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) an interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant;

(2) this chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;

(3) a subordination agreement may be contained in an environmental covenant or in a separate record that is recorded. If the environmental covenant covers commonly owned property in a common interest community, the environmental covenant or the subordination agreement may be signed by any person authorized by the governing board of the owners' association; and

(4) an agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Sec. 4. **[114D.15] CONTENTS OF ENVIRONMENTAL COVENANT.**

(a) An environmental covenant must:

(1) state on its first page that the instrument is an environmental covenant executed pursuant to this chapter;

(2) contain a legally sufficient description of the real property subject to the covenant;

(3) describe the activity and use limitations on the real property;

(4) identify every holder;

(5) be signed and acknowledged by the environmental agency, every holder, and every owner of the fee simple of the real property subject to the covenant; and

(6) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by paragraph (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) requirements for notice of any transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination or the environmental response project on, the real property subject to the covenant;

(2) requirements for periodic reporting describing compliance with the covenant;

(3) rights of access to the real property granted in connection with implementation or enforcement of the covenant;

(4) a brief narrative description of the contamination and environmental response project, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) limitation on amendment or termination of the covenant in addition to those contained in sections 114D.40 and 114D.45; and

(6) rights of the holder in addition to its right to enforce the covenant pursuant to section 114D.50.

(c) The environmental agency may set reasonable conditions for its approval of an environmental covenant, including:

(1) requiring that persons specified by the agency that have interests in the real property also sign the covenant;

(2) requiring that a person who holds a prior interest in the real property subject to the covenant agree to subordinate that interest where applicable;

(3) requiring that a signatory to the covenant waive the right to sign a termination or amendment of the covenant as described in section 114D.45, paragraph (a), clause (3); and

(4) requiring the inclusion within the text of the covenant information, restrictions, or requirements as described in paragraph (b).

Sec. 5. **[114D.20] VALIDITY; EFFECT ON OTHER INSTRUMENTS.**

(a) An environmental covenant created under this chapter runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to a person other than the original holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) the benefit or burden does not touch or concern real property;

(7) there is no privity of estate or contract;

(8) the holder dies, ceases to exist, resigns, or is replaced; or

(9) the owner of an interest in the real property subject to the environmental covenant and the holder are the same person.

(c) Any instrument that imposes activity and use limitations, including any conservation easement, declaration, restrictive covenant, or similar instrument created before the effective date of this chapter remains valid and enforceable as provided in the law under which it was created. This chapter does not apply in any other respect to such an instrument.

(d) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

Sec. 6. **[114D.25] RELATIONSHIP TO OTHER LAND USE LAW.**

(a) This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant.

(b) An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

(c) An environmental agency that exercises authority under law other than this chapter to require as part of an environmental response project the performance of a response or corrective action that would not otherwise be an authorized use of real property under zoning or other real property law or prior recorded instruments may include such requirement as an affirmative obligation in an environmental covenant.

Sec. 7. **[114D.30] NOTICE.**

(a) A copy of an environmental covenant, and any amendments or notices of termination thereof, must be provided by the persons and in the manner required by the environmental agency to:

(1) each person that signed the covenant or their successor or assign;

(2) each person holding a recorded interest in the real property subject to the covenant;

(3) each person in possession of the real property subject to the covenant;

(4) each political subdivision in which real property subject to the covenant is located; and

(5) any other person the environmental agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Sec. 8. **[114D.35] RECORDING.**

(a) An environmental covenant and any amendment or termination of the covenant must be recorded with the county recorder or registrar of titles, as applicable, in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in section 114D.40, paragraph (f), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

Sec. 9. **[114D.40] DURATION; AMENDMENT BY COURT ACTION.**

(a) An environmental covenant is perpetual unless it is:

(1) by its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) terminated by consent pursuant to section 114D.45;

(3) terminated pursuant to paragraph (b) or (e);

(4) terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) terminated or modified in an eminent domain proceeding, but only if:

(i) the environmental agency that signed the covenant is a party to the proceeding;

(ii) all persons identified in paragraph (c) are given notice of the pendency of the proceeding; and

(iii) the court determines, after hearing, that the activity and use limitations subject to termination or modification are no longer required to protect public health or welfare or the environment.

(b) The environmental agency that approved an environmental covenant may determine whether to terminate or reduce the burden on the real property of the covenant if the agency determines that some or all of the activity and use limitations under the covenant are no longer required to protect public health or welfare or the environment or modify the covenant if the agency determines that modification is required to adequately protect public health or welfare or the environment.

(c) The agency shall provide notice of any proposed action under paragraph (b) to each person with a current recorded interest in the real property subject to the environmental covenant, each holder, all other persons who originally signed the environmental covenant, or their successors or assigns, and any other person with rights or obligations under the covenant. The environmental agency shall provide 30 days for comment on the proposed action by parties entitled to notice. Any person entitled to notice under this paragraph may request a contested case under chapter 14 by making the request in writing within the 30-day comment period. A determination by a state environmental agency under this paragraph is a final agency decision subject to judicial review in the same manner as provided in sections 14.63 to 14.68.

(d) Any person entitled to notice under this subdivision may apply in writing to the environmental agency for a determination under paragraph (b) that an existing covenant be terminated, that the burden of a covenant be reduced, or that covenant be modified. The application must specify the determination sought by the applicant, the reasons why the agency should make the determination, and the information which would support it.

If the environmental agency fails to commence a proceeding under paragraph (b) within 60 days of receipt of the application, the applicant may bring a de novo action in the district court for termination, reduction of burden, or modification of the environmental covenant pursuant to paragraph (e).

(e) The district court for the county in which the real property subject to an environmental covenant is located may, under the doctrine of changed circumstances, terminate the covenant, reduce its burden on the real property, or modify its terms in a de novo action if an environmental agency fails to commence a proceeding within 60 days as provided under paragraph (d). The applicant under paragraph (d) or any other person with an interest in the environmental covenant, including an owner of an interest in the real property, may commence an action under this paragraph. The person commencing the action shall serve notice of the action on the environmental agency and any person entitled to notice under paragraph (c). The court shall terminate, reduce the burden of, or modify the environmental covenant if the court determines that the person bringing the action shows that some or all of the activity and use limitations under the covenant do not, or are no longer required to, protect public health or welfare or the environment.

(f) An environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(g) An environmental covenant may not be extinguished, limited, or impaired by application of section 500.20 or 541.023.

Sec. 10. **[114D.45] AMENDMENT OR TERMINATION BY CONSENT.**

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) the environmental agency;

(2) the current owner of the fee simple of the real property subject to the covenant;

(3) every other original signatory to the covenant, or their successor or assign, unless:

(i) the person waived the right to consent to termination or modification in the environmental covenant or another signed and acknowledged record that is recorded;

(ii) the person fails to respond within 60 days to a notice requesting the person's consent to amendment or termination, when the notice was mailed by certified mail to the person's last known address, as obtained from the United States Postal Service; or

(iii) a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) each holder, except as otherwise provided in paragraph (d).

Any person may establish that the notice described in clause (3), item (ii), was properly mailed by recording an affidavit to that effect from a person having knowledge of the facts, and a certified copy of the recorded affidavit shall be prima facie evidence of the facts stated therein.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in the environmental covenant or other signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, or as otherwise provided in the environmental covenant, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in paragraph (c) or in an environmental covenant:

(1) a holder may not assign its interest without consent of the other parties specified in paragraph (a);

(2) a holder may be removed and replaced by agreement of the other parties specified in paragraph (a); and

(3) a court of competent jurisdiction may fill a vacancy in the position of holder.

Sec. 11. **[114D.50] ENFORCEMENT OF ENVIRONMENTAL COVENANT.**

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) a party to the covenant, including all holders;

(2) the environmental agency that signed the covenant;

(3) any person to whom the covenant expressly grants power to enforce;

(4) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) a political subdivision in which the real property subject to the covenant is located.

(b) This chapter does not limit the regulatory authority of the environmental agency under law other than this chapter with respect to an environmental response project.

(c) A person is not responsible for or subject to liability arising from a release or threatened release of contamination into the environment, or for remediation costs attendant thereto, solely because it has signed, holds rights to, or otherwise has the right to enforce an environmental covenant.

Sec. 12. **[114D.60] UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 13. **[114D.65] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but does not modify, limit, or supersede section 101 of that act, United States Code, title 15, section 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, United States Code, title 15, section 7003(b).

Sec. 14. Minnesota Statutes 2004, section 115.072, is amended to read:

115.072 RECOVERY OF LITIGATION COSTS AND EXPENSES.

In any action brought by the attorney general, in the name of the state, pursuant to the provisions of this chapter and chapters 114C, 114D, and 116, for civil penalties, injunctive relief, or in an action to compel compliance, if the state shall finally prevail, and if the proven violation was willful, the state, in addition to other penalties provided in this chapter, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the state. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

Amounts recovered under the provisions of this section and section 115.071, subdivisions 3 to 5, shall be paid into the environmental fund in the state treasury to the extent provided in section 115.073.

Sec. 15. Minnesota Statutes 2004, section 115B.17, subdivision 15, is amended to read:

Subd. 15. **Acquisition of property.** The agency may acquire, by purchase or donation, ~~an interest~~ interests in real property, including easements, ~~restrictive~~ environmental covenants under chapter 114D, and leases, that the agency determines ~~is~~ are necessary for response action. ~~The validity and duration of a restrictive covenant or nonpossessory easement acquired under this subdivision shall be determined in the same manner as the validity and duration of a conservation easement under chapter 84C, unless the duration is otherwise provided in the agreement.~~ The agency may acquire an easement by condemnation only if the agency is unable, after reasonable efforts, to acquire an interest in real property by purchase or donation. The provisions of chapter 117 govern condemnation proceedings by the agency under this subdivision. A donation of an interest in real property to the agency is not effective until the agency executes a certificate of

acceptance. The state is not liable under this chapter solely as a result of acquiring an interest in real property under this subdivision. Agency approval of an environmental covenant under chapter 114D is sufficient evidence of acceptance of an interest in real property where the agency is expressly identified as a holder in the covenant."

Amend the title accordingly

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

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

Senators Hottinger and Limmer introduced--

S.F. No. 1426: Referred to the Committee on Environment and Natural Resources.

A bill for an act

relating to environment; adopting the Uniform Environmental Covenants Act; amending Minnesota Statutes 2004, section 115B.17, subdivision 15; proposing coding for new law as Minnesota Statutes, chapter 114D.

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

UNIFORM ENVIRONMENTAL COVENANTS ACT

Section 1. [114D.01] [SHORT TITLE.]

This chapter may be cited as the Uniform Environmental Covenants Act.

Sec. 2. [114D.05] [DEFINITIONS.]

Subdivision 1. [SCOPE.] For the purposes of this chapter, the definitions in this subdivision have the meanings given.

Subd. 2. [ACTIVITY AND USE LIMITATIONS.] "Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.

Subd. 3. [AGENCY.] "Agency" means the Pollution Control Agency, Agriculture Department, or another state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

Subd. 4. [COMMON INTEREST COMMUNITY.] "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, for maintenance, or

for improvement of other real property described in a recorded covenant that creates the common interest community.

Subd. 5. [ENVIRONMENTAL COVENANT.] "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

Subd. 6. [ENVIRONMENTAL RESPONSE PROJECT.] "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(1) under a federal or state program governing environmental remediation of real property;

(2) incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency;

(3) corrective actions or response to incidents under chapter 18B, 18C, 18D, or 18E;

(4) corrective action under chapter 115C; or

(5) closure, contingency or corrective actions required under regulations applicable to waste treatment, storage, or disposal facilities or to above or below ground tanks.

Subd. 7. [HOLDER.] "Holder" means the grantee of an environmental covenant as specified in section 114D.10, paragraph (a).

Subd. 8. [PERSON.] "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

Subd. 9. [RECORD.] "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 10. [STATE.] "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Sec. 3. [114D.10] [NATURE OF RIGHTS; SUBORDINATION OF

INTERESTS.]

(a) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(b) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(c) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) an interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant;

(2) this chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;

(3) a subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association; and

(4) an agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the

environmental covenant.

Sec. 4. [114D.15] [CONTENTS OF ENVIRONMENTAL COVENANT.]

(a) An environmental covenant must:

(1) state that the instrument is an environmental covenant executed pursuant to this chapter;

(2) contain a legally sufficient description of the real property subject to the covenant;

(3) describe the activity and use limitations on the real property;

(4) identify every holder;

(5) be signed by the agency, every holder, and, unless waived by the agency, every owner of the fee simple of the real property subject to the covenant; and

(6) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by paragraph (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) requirements for periodic reporting describing compliance with the covenant;

(3) rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) a brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) limitation on amendment or termination of the covenant in addition to those contained in sections 114D.40 and 114D.45; and

(6) rights of the holder in addition to its right to enforce the covenant pursuant to section 114D.50.

(c) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

Sec. 5. [114D.20] [VALIDITY; EFFECT ON OTHER INSTRUMENTS.]

(a) An environmental covenant that complies with this chapter runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to a person other than the original holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) the benefit or burden does not touch or concern real property;

(7) there is no privity of estate or contract;

(8) the holder dies, ceases to exist, resigns, or is replaced; or

(9) the owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of this chapter is not invalid or unenforceable because of any of the limitations on enforcement of interest described in paragraph (b) or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

(d) This chapter does not invalidate or render

unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

Sec. 6. [114D.25] [RELATIONSHIP TO OTHER LAND USE LAW.]

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

Sec. 7. [114D.30] [NOTICE.]

(a) A copy of an environmental covenant must be provided by the persons and in the manner required by the agency to:

(1) each person that signed the covenant;

(2) each person holding a recorded interest in the real property subject to the covenant;

(3) each person in possession of the real property subject to the covenant;

(4) each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) any other person the agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Sec. 8. [114D.35] [RECORDING.]

(a) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in section 114D.40, paragraph (c), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

Sec. 9. [114D.40] [DURATION; AMENDMENT BY COURT ACTION.]

(a) An environmental covenant is perpetual unless it is:

(1) by its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) terminated by consent pursuant to section 114D.45;

(3) terminated pursuant to paragraph (b);

(4) terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) terminated or modified in an eminent domain proceeding, but only if:

(i) the agency that signed the covenant is a party to the proceeding;

(ii) all persons identified in section 114D.45, paragraphs (a) and (b), are given notice of the pendency of the proceeding; and

(iii) the court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in section 114D.45, paragraphs (a) and (b), have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to chapter 14.

(c) Except as otherwise provided in paragraphs (a) and (b), an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(d) An environmental covenant may not be extinguished, limited, or impaired by application of section 500.20 or 541.023.

Sec. 10. [114D.45] [AMENDMENT OR TERMINATION BY CONSENT.]

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) the agency;

(2) unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(3) each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) except as otherwise provided in paragraph (d), clause (2), the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in an environmental covenant:

(1) a holder may not assign its interest without consent of the other parties;

(2) a holder may be removed and replaced by agreement of the other parties specified in paragraph (a); and

(3) a court of competent jurisdiction may fill a vacancy in the position of holder.

Sec. 11. [114D.50] [ENFORCEMENT OF ENVIRONMENTAL COVENANT.]

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) a party to the covenant;

(2) the agency;

(3) any person to whom the covenant expressly grants power to enforce;

(4) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation

of the covenant; or

(5) a municipality or other unit of local government in which the real property subject to the covenant is located.

(b) This chapter does not limit the regulatory authority of the agency under law other than this chapter with respect to an environmental response project.

(c) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

Sec. 12. [114D.55] [REGISTRY; SUBSTITUTE NOTICE.]

(a) The secretary of state shall establish and maintain a registry that contains all environmental covenants and any amendment or termination of those covenants. The registry may also contain any other information concerning environmental covenants and the real property subject to them which the agency considers appropriate. The registry is public data for purposes of chapter 13.

(b) After an environmental covenant or an amendment or termination of a covenant is filed in the registry established pursuant to paragraph (a), a notice of the covenant, amendment, or termination that complies with this section may be recorded in the land records in lieu of recording the entire covenant. Any such notice must contain:

(1) a legally sufficient description and any available street address of the real property subject to the covenant;

(2) the name and address of the owner of the fee simple interest in the real property, agency, and holder if other than the agency;

(3) a statement that the covenant, amendment, or termination is available in a registry at the secretary of state, which discloses the method of any electronic access; and

(4) a statement that the notice is notification of an environmental covenant executed pursuant to this chapter.

(c) A statement in substantially the following form, executed with the same formalities as a deed in this state, satisfies the requirements of paragraph (b):

"1. This notice is filed in the land records of the [political subdivision] of [insert name of jurisdiction in which the real property is located] pursuant to Minnesota Statutes, section 114D.55.

2. This notice and the covenant, amendment, or termination to which it refers may impose significant obligations with respect to the property described below.

3. A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is [insert address of property] [not available].

4. The name and address of the owner of the fee simple interest in the real property on the date of this notice is [insert name of current owner of the property and the owner's current address as shown on the tax records of the jurisdiction in which the property is located].

5. The environmental covenant, amendment, or termination was signed by the Pollution Control Agency, 520 Lafayette Road, St. Paul, MN.

6. The environmental covenant, amendment, or termination was filed in the registry on [insert date of filing].

7. The full text of the covenant, amendment, or termination and any other information required by the agency is on file and available for inspection and copying in the registry maintained for that purpose by the secretary of state at 100 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, MN 55155. [The covenant, amendment, or termination may be found electronically at [insert web address for covenant].]"

Sec. 13. [114D.60] [UNIFORMITY OF APPLICATION AND CONSTRUCTION.]

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 14. [114D.65] [RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.]

This chapter modifies, limits, or supersedes the federal

Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but does not modify, limit, or supersede section 101 of that act, United States Code, title 15, section 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, United States Code, title 15, section 7003(b).

Sec. 15. Minnesota Statutes 2004, section 115B.17, subdivision 15, is amended to read:

Subd. 15. [ACQUISITION OF PROPERTY.] The agency may acquire, by purchase or donation, ~~an interest~~ interests in real property, including easements, ~~restrictive~~ environmental covenants under chapter 114D, and leases, that the agency determines ~~is~~ are necessary for response action. ~~The validity and duration of a restrictive covenant or nonpossessory easement acquired under this subdivision shall be determined in the same manner as the validity and duration of a conservation easement under chapter 84C, unless the duration is otherwise provided in the agreement.~~ The agency may acquire an easement by condemnation only if the agency is unable, after reasonable efforts, to acquire an interest in real property by purchase or donation. The provisions of chapter 117 govern condemnation proceedings by the agency under this subdivision. A donation of an interest in real property to the agency is not effective until the agency executes a certificate of acceptance. The state is not liable under this chapter solely as a result of acquiring an interest in real property under this subdivision.

Senator ..... moves to amend S.F. No. 1426 as follows:

Delete everything after the enacting clause and insert:

"Section 1. **[114D.01] SHORT TITLE.**

This chapter may be cited as the Uniform Environmental Covenants Act.

Sec. 2. **[114D.05] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the definitions in this subdivision have the meanings given.

Subd. 2. **Activity and use limitations.** "Activity and use limitations" means restrictions or obligations with respect to real property that are associated with an environmental response project.

Subd. 3. **Common interest community.** "Common interest community" means a common interest community as defined in chapter 515B.

Subd. 4. **Environmental agency.** "Environmental agency" means the Pollution Control Agency, Agriculture Department, or another state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

Subd. 5. **Environmental covenant.** "Environmental covenant" means a servitude created under this chapter that imposes activity and use limitations.

Subd. 6. **Environmental response project.** "Environmental response project" means a plan or work performed to clean up, eliminate, investigate, minimize, mitigate, or prevent the release or threatened release of contaminants affecting real property in order to protect public health or welfare or the environment, including:

(1) response or corrective actions under federal or state law, including chapters 115B, 115C, 115E, and 116, and the Comprehensive Environmental Response, Compensation and Liability Act, United States Code, title 44, section 9601, et seq.;

(2) corrective actions or response to agricultural chemical incidents under chapters 18B, 18C, 18D, and 18E; and

(3) closure, contingency, or corrective actions required under rules or regulations applicable to waste treatment, storage, or disposal facilities or to above or below ground tanks.

Subd. 7. **Holder.** "Holder" means any person identified as a holder of an environmental covenant as specified in section 114D.10, paragraph (a).

Subd. 8. **Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation,

political subdivision or special purpose unit of government, agency, or instrumentality of the state or federal government, or any other legal or commercial entity.

Subd. 9. **Record.** "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 10. **Recorded.** "Recorded" means recorded with the county recorder or registrar of title, as applicable, in each county where the real property is located.

Subd. 11. **State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Sec. 3. **[114D.10] NATURE OF RIGHTS; ROLE OF ENVIRONMENTAL AGENCY; SUBORDINATION OF INTERESTS.**

(a) Any person, including a person that owns an interest in the real property subject to the environmental convenant, the environmental agency, or any other political subdivision or unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property. The holder is the grantee of the real property interest conveyed under an environmental covenant.

(b) Unless an environmental agency is a holder, any right that the agency may have with respect to an environmental covenant does not constitute an interest in real property. Approval of an environmental covenant does not make the environmental agency a holder unless it has authority under law other than this chapter to acquire an interest in real property for purposes related to an environmental response project and it is expressly identified as a holder in the environmental covenant.

(c) An environmental agency is bound by any obligation it assumes in an environmental covenant, but an environmental agency does not assume obligations merely by signing an environmental covenant. As provided in section 114D.15, an environmental covenant is not valid unless signed by the environmental agency and the environmental agency may set reasonable conditions for its approval of an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person expressly assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) an interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant;

(2) this chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;

(3) a subordination agreement may be contained in an environmental covenant or in a separate record that is recorded. If the environmental covenant covers commonly owned property in a common interest community, the environmental covenant or the subordination agreement may be signed by any person authorized by the governing board of the owners' association; and

(4) an agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Sec. 4. **[114D.15] CONTENTS OF ENVIRONMENTAL COVENANT.**

(a) An environmental covenant must:

(1) state on its first page that the instrument is an environmental covenant executed pursuant to this chapter;

(2) contain a legally sufficient description of the real property subject to the covenant;

(3) describe the activity and use limitations on the real property;

(4) identify every holder;

(5) be signed and acknowledged by the environmental agency, every holder, and every owner of the fee simple of the real property subject to the covenant; and

(6) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by paragraph (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) requirements for notice of any transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination or the environmental response project on, the real property subject to the covenant;

(2) requirements for periodic reporting describing compliance with the covenant;

(3) rights of access to the real property granted in connection with implementation or enforcement of the covenant;

(4) a brief narrative description of the contamination and environmental response project, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) limitation on amendment or termination of the covenant in addition to those contained in sections 114D.40 and 114D.45; and

(6) rights of the holder in addition to its right to enforce the covenant pursuant to section 114D.50.

(c) The environmental agency may set reasonable conditions for its approval of an environmental covenant, including:

(1) requiring that persons specified by the agency that have interests in the real property also sign the covenant;

(2) requiring that a person who holds a prior interest in the real property subject to the covenant agree to subordinate that interest where applicable;

(3) requiring that a signatory to the covenant waive the right to sign a termination or amendment of the covenant as described in section 114D.45, paragraph (a), clause (3); and

(4) requiring the inclusion within the text of the covenant information, restrictions, or requirements as described in paragraph (b).

Sec. 5. **[114D.20] VALIDITY; EFFECT ON OTHER INSTRUMENTS.**

(a) An environmental covenant created under this chapter runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to a person other than the original holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) the benefit or burden does not touch or concern real property;

(7) there is no privity of estate or contract;

(8) the holder dies, ceases to exist, resigns, or is replaced; or

(9) the owner of an interest in the real property subject to the environmental covenant and the holder are the same person.

(c) Any instrument that imposes activity and use limitations, including any conservation easement, declaration, restrictive covenant, or similar instrument created before the effective date of this chapter remains valid and enforceable as provided in the law under which it was created. This chapter does not apply in any other respect to such an instrument.

(d) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

Sec. 6. **[114D.25] RELATIONSHIP TO OTHER LAND USE LAW.**

(a) This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant.

(b) An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

(c) An environmental agency that exercises authority under law other than this chapter to require as part of an environmental response project the performance of a response or corrective action that would not otherwise be an authorized use of real property under zoning or other real property law or prior recorded instruments may include such requirement as an affirmative obligation in an environmental covenant.

Sec. 7. **[114D.30] NOTICE.**

(a) A copy of an environmental covenant, and any amendments or notices of termination thereof, must be provided by the persons and in the manner required by the environmental agency to:

(1) each person that signed the covenant or their successor or assign;

(2) each person holding a recorded interest in the real property subject to the covenant;

(3) each person in possession of the real property subject to the covenant;

(4) each political subdivision in which real property subject to the covenant is located; and

(5) any other person the environmental agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Sec. 8. **[114D.35] RECORDING.**

(a) An environmental covenant and any amendment or termination of the covenant must be recorded with the county recorder or registrar of titles, as applicable, in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in section 114D.40, paragraph (f), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

Sec. 9. **[114D.40] DURATION; AMENDMENT BY COURT ACTION.**

(a) An environmental covenant is perpetual unless it is:

(1) by its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) terminated by consent pursuant to section 114D.45;

(3) terminated pursuant to paragraph (b) or (e);

(4) terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) terminated or modified in an eminent domain proceeding, but only if:

(i) the environmental agency that signed the covenant is a party to the proceeding;

(ii) all persons identified in paragraph (c) are given notice of the pendency of the proceeding; and

(iii) the court determines, after hearing, that the activity and use limitations subject to termination or modification are no longer required to protect public health or welfare or the environment.

(b) The environmental agency that approved an environmental covenant may determine whether to terminate or reduce the burden on the real property of the covenant if the agency determines that some or all of the activity and use limitations under the covenant are no longer required to protect public health or welfare or the environment or modify the covenant if the agency determines that modification is required to adequately protect public health or welfare or the environment.

(c) The agency shall provide notice of any proposed action under paragraph (b) to each person with a current recorded interest in the real property subject to the environmental covenant, each holder, all other persons who originally signed the environmental covenant, or their successors or assigns, and any other person with rights or obligations under the covenant. The environmental agency shall provide 30 days for comment on the proposed action by parties entitled to notice. Any person entitled to notice under this paragraph may request a contested case under chapter 14 by making the request in writing within the 30-day comment period. A determination by a state environmental agency under this paragraph is a final agency decision subject to judicial review in the same manner as provided in sections 14.63 to 14.68.

(d) Any person entitled to notice under this subdivision may apply in writing to the environmental agency for a determination under paragraph (b) that an existing covenant be terminated, that the burden of a covenant be reduced, or that covenant be modified. The application must specify the determination sought by the applicant, the reasons why the agency should make the determination, and the information which would support it.

If the environmental agency fails to commence a proceeding under paragraph (b) within 60 days of receipt of the application, the applicant may bring a de novo action in the district court for termination, reduction of burden, or modification of the environmental covenant pursuant to paragraph (e).

(e) The district court for the county in which the real property subject to an environmental covenant is located may, under the doctrine of changed circumstances, terminate the covenant, reduce its burden on the real property, or modify its terms in a de novo action if an environmental agency fails to commence a proceeding within 60 days as provided under paragraph (d). The applicant under paragraph (d) or any other person with an interest in the environmental covenant, including an owner of an interest in the real property, may commence an action under this paragraph. The person commencing the action shall serve notice of the action on the environmental agency and any person entitled to notice under paragraph (c). The court shall terminate, reduce the burden of, or modify the environmental covenant if the court determines that the person bringing the action shows that some or all of the activity and use limitations under the covenant do not, or are no longer required to, protect public health or welfare or the environment.

(f) An environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(g) An environmental covenant may not be extinguished, limited, or impaired by application of section 500.20 or 541.023.

Sec. 10. **[114D.45] AMENDMENT OR TERMINATION BY CONSENT.**

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) the environmental agency;

(2) the current owner of the fee simple of the real property subject to the covenant;

(3) every other original signatory to the covenant, or their successor or assign, unless:

(i) the person waived the right to consent to termination or modification in the environmental covenant or another signed and acknowledged record that is recorded;

(ii) the person fails to respond within 60 days to a notice requesting the person's consent to amendment or termination, when the notice was mailed by certified mail to the person's last known address, as obtained from the United States Postal Service; or

(iii) a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) each holder, except as otherwise provided in paragraph (d).

Any person may establish that the notice described in clause (3), item (ii), was properly mailed by recording an affidavit to that effect from a person having knowledge of the facts, and a certified copy of the recorded affidavit shall be prima facie evidence of the facts stated therein.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in the environmental covenant or other signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, or as otherwise provided in the environmental covenant, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in paragraph (c) or in an environmental covenant:

(1) a holder may not assign its interest without consent of the other parties specified in paragraph (a);

(2) a holder may be removed and replaced by agreement of the other parties specified in paragraph (a); and

(3) a court of competent jurisdiction may fill a vacancy in the position of holder.

Sec. 11. **[114D.50] ENFORCEMENT OF ENVIRONMENTAL COVENANT.**

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) a party to the covenant, including all holders;

(2) the environmental agency that signed the covenant;

(3) any person to whom the covenant expressly grants power to enforce;

(4) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) a political subdivision in which the real property subject to the covenant is located.

(b) This chapter does not limit the regulatory authority of the environmental agency under law other than this chapter with respect to an environmental response project.

(c) A person is not responsible for or subject to liability arising from a release or threatened release of contamination into the environment, or for remediation costs attendant thereto, solely because it has signed, holds rights to, or otherwise has the right to enforce an environmental covenant.

Sec. 12. **[114D.60] UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 13. **[114D.65] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but does not modify, limit, or supersede section 101 of that act, United States Code, title 15, section 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, United States Code, title 15, section 7003(b).

Sec. 14. Minnesota Statutes 2004, section 115.072, is amended to read:

115.072 RECOVERY OF LITIGATION COSTS AND EXPENSES.

In any action brought by the attorney general, in the name of the state, pursuant to the provisions of this chapter and chapters 114C, 114D, and 116, for civil penalties, injunctive relief, or in an action to compel compliance, if the state shall finally prevail, and if the proven violation was willful, the state, in addition to other penalties provided in this chapter, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the state. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

Amounts recovered under the provisions of this section and section 115.071, subdivisions 3 to 5, shall be paid into the environmental fund in the state treasury to the extent provided in section 115.073.

Sec. 15. Minnesota Statutes 2004, section 115B.17, subdivision 15, is amended to read:

Subd. 15. **Acquisition of property.** The agency may acquire, by purchase or donation, ~~an interest~~ interests in real property, including easements, ~~restrictive~~ environmental covenants under chapter 114D, and leases, that the agency determines ~~is~~ are necessary for response action. ~~The validity and duration of a restrictive covenant or nonpossessory easement acquired under this subdivision shall be determined in the same manner as the validity and duration of a conservation easement under chapter 84C, unless the duration is otherwise provided in the agreement.~~The agency may acquire an easement by condemnation only if the agency is unable, after reasonable efforts, to acquire an interest in real property by purchase or donation. The provisions of chapter 117 govern condemnation proceedings by the agency under this subdivision. A donation of an interest in real property to the agency is not effective until the agency executes a certificate of acceptance. The state is not liable under this chapter solely as a result of acquiring an interest in real property under this subdivision. Agency approval of an environmental covenant under chapter 114D is sufficient evidence of acceptance of an interest in real property where the agency is expressly identified as a holder in the covenant."

Amend the title accordingly

SF 1426

Uniform Law Commissioners

UNIFORM ENVIRONMENTAL COVENANTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. ONTARIO STREET, SUITE 1300
CHICAGO, ILLINOIS 60611
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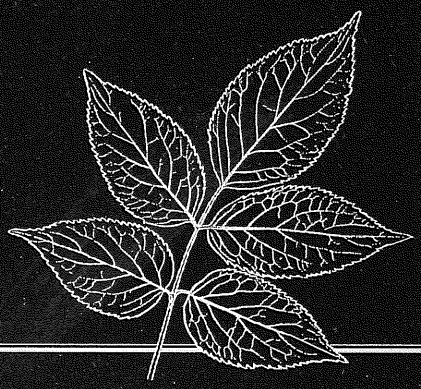
UNIFORM ENVIRONMENTAL COVENANTS ACT



National Conference of Commissioners on Uniform State Laws

UNIFORM ENVIRONMENTAL COVENANTS ACT

Drafted by the

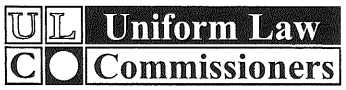
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWELFTH YEAR
IN WASHINGTON, DC
AUGUST 1-7, 2003



WITH PREFATORY NOTE AND COMMENTS

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UNIFORM ENVIRONMENTAL COVENANTS ACT

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Prefatory Note

Environmental covenants - whether called "institutional controls", "land use controls" or some other term - are increasingly being used as part of the environmental remediation process for contaminated real property. An environmental covenant typically is used when the real property is to be cleaned up to a level determined by the potential environmental risks posed by a particular use, rather than to unrestricted use standards. Such risk-based remediation is both environmentally and economically preferable in many circumstances, although it will often allow the parties to leave residual contamination in the real property. An environmental covenant is then used to implement this risk-based cleanup by controlling the potential risks presented by that residual contamination.

Two principal policies are served by confirming the validity of environmental covenants. One is to ensure that land use restrictions, mandated environmental monitoring requirements, and a wide range of common engineering controls designed to control the potential environmental risk of residual contamination will be reflected on the land records and effectively enforced over time as a valid real property servitude. This Act addresses a variety of common law doctrines - the same doctrines that led to adoption of the Uniform Conservation Easement Act - that cast doubt on such enforceability.

A second important policy served by this Act is the return of previously contaminated property, often located in urban areas, to the stream of commerce. The environmental and real property legal communities have often been unable to identify a common set of principles applicable to such properties. The frequent result has been that these properties do not attract interested purchasers and therefore remain vacant, blighted and unproductive. This is an undesirable outcome for communities seeking to return once important commercial sites to productive use.

Large numbers of contaminated sites are unlikely to be successfully recycled until regulators, potentially responsible parties, affected communities, prospective purchasers and their lenders become confident that environmental covenants will be properly drafted, implemented, monitored and enforced for so long as needed. This Act should encourage transfer of ownership and property re-use by offering a clear and objective process for creating, modifying or terminating environmental covenants and for

recording these actions in recorded instruments which will be reflected in the title abstract of the property in question.

Of course, risk-based remediation must effectively control the potential risk presented by the residual contamination that remains in the real property and thereby protect human health and the environment. When risk-based remediation imposes restrictions on how the property may be used after the cleanup, requires continued monitoring of the site, or requires construction of permanent containment or other remedial structures on the site, environmental covenants are crucial tools to make these restrictions and requirements effective. Yet environmental covenants can do so only if their legal status under state property law and their practical enforceability are assured, as this proposed Uniform Act seeks to do.

At the time this Act was promulgated, approximately half the states had laws providing for land use restrictions in conjunction with risk-based remedies. Those existing laws vary greatly in scope – some simply note the need for land use restrictions, while others create tools similar to many of the legal structures envisioned by this Act. Most such acts apply only to cleanups under a state program.

In contrast, this Act includes a number of provisions absent from most existing state laws, including the Act's applicability to both federal and state-led cleanups. For example, this Act expressly precludes the application of traditional common law doctrines that might hinder enforcement. It ensures that a covenant will survive despite tax lien foreclosure, adverse possession, and marketable title statutes. The Act also provides detailed provisions regarding termination and amendment of older covenants, and includes important provisions on dealing with recorded interests that have priority over the new covenant. Further, it offers guidance to courts confronted with a proceeding that seeks to terminate such a covenant through eminent domain or the doctrine of changed circumstances.

This Act benefitted greatly during the drafting process from broad stakeholder input. As a result, the Act contains unique provisions designed to protect a variety of interests commonly absent in existing state laws. For example, the Act confers on property owners that grant an environmental covenant the right to enforce the covenant and requires their consent to any termination or modification. This should mitigate an owner's future liability concerns for residual contamination and encourage the sale and

reuse of contaminated properties. And, following traditional real property principles, the Act validates the interests of lenders who hold a prior mortgage on the contaminated property, absent voluntary subordination.

It is important to emphasize that environmental covenants are but one tool in a larger context of environmental remediation regulation; remediation is typically overseen by a government agency enforcing substantial statutory and regulatory requirements. The covenant should be the crucial end result of that process - it may be used to ensure that the activity and use limitations imposed in the agency's remedial decision process remain effective, and thus protect the public from residual contamination that remains, while also permitting re-use of the site in a timely and economically valuable way.

Environmental remediation projects may be done in a widely diverse array of contamination fact patterns and regulatory contexts. For example, the remediation may be done at a large industrial operating or waste disposal site. In such a situation, the cleanup could be done under federal law and regulation, such as the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") or the Resource Conservation and Recovery Act ("RCRA"). Generally speaking, CERCLA and RCRA would also apply to remediation done at Department of Defense or Department of Energy sites that are anticipated to be transferred out of fed ownership.

In other situations, state law and regulation will be an effective regulatory framework for remediation projects. State law is given a role to play in the federal environmental policy discussed above. Beyond this, state law may be the primary source of regulatory authority for many remediation projects. These may include larger sites and will often include smaller, typically urban, sites. In addition, many states authorize and supervise voluntary cleanup efforts, and these also may find environmental covenants a useful policy tool. With both state and federal environmental remediation projects, the applicable cleanup statutes and regulations will provide the basis for the restrictions and controls to be included in the resulting environmental covenants.

This Act does not supplant or impose substantive clean-up standards, either generally or in a particular case. The Act assumes those standards will be developed in a prior regulatory proceeding. Rather, the Act is in-

tended to validate site-specific, environmental use restrictions resulting from an environmental response project that proposes to leave residual contamination in the ground in any of the different situations described above. Once the governing regulatory authority and the property owner have determined to use a risk-based approach to cleanup to protect the public from residual contamination, this Act supplies the legal infrastructure for creating and enforcing the environmental covenant under state law.

This Act does not require issuance of regulations. However, many state and federal agencies have developed implementation tools, including model covenants, statements of best practices, and advisory groups that include members of the real property and environmental practice bars as well as business and environmental groups. Developing and sharing such implementation tools and the advice of such advisory groups should support the effective implementation of the Act and is encouraged.

This Act does not address or change the larger context of environmental remediation regulation discussed above, and a number of aspects of that regulation should be noted here.

First, many contaminated properties are subject to the concurrent regulatory jurisdiction of both federal and state agencies. This Act does not address the exercise of such concurrent jurisdiction, and it is not intended to limit the jurisdiction of any state agency.

A specific issue arises with federal property that is not anticipated to be transferred to a non-federal owner. This Act takes no position regarding the question of whether remediation of such property is subject to State regulatory jurisdiction. In contrast, where federal property is transferred to a non-federal owner, state agencies will clearly have jurisdiction over environmental covenants on the transferred property where state environmental law so provides.

Second, potential purchasers of property subject to an environmental covenant should be aware that both state and federal environmental law other than this Act may authorize reopening the environmental remediation determination, even after the relevant statutory standards have been met on that site. While such reopeners are rare, they may be possible to respond either to newly-discovered contamination or new scientific

knowledge of the risk posed by existing contamination. As a consequence, under existing environmental law, the then-current owner may have remediation liability. While the dampening effect of such potential liability on the willingness of potential purchasers to buy contaminated property is clear, the issue remains important in the eyes of some interest groups. Federal law now provides protection for bona fide purchasers of such property under specified circumstances, and the law of some states may also afford some protection. However, this Act does not provide any such bona fide purchaser protection.

For these and other reasons, it is important that prospective purchasers of contaminated properties - particularly those successors who may buy some years after a clean-up has been completed - have actual knowledge of covenants at the time of purchase. Environmental covenants recorded pursuant to this Act will provide constructive notice of the covenant and in many circumstances recording will provide actual notice. However, to ensure that such persons have actual notice, a state or a local recording authority may wish to highlight the existence of environmental covenants in their communities with maps showing the location of properties subject to environmental covenants, similar to the kinds of maps commonly found in local land records offices to show the location of zoning districts or flood plains.

Legislative Notes

Non Participating Owner. This Act contemplates a situation where a risk based clean-up is agreed to by the regulatory agency and the parties responsible for the clean-up, potentially including the fee owner and the owners of other interests in the property. As a consequence of that agreement, the Act assumes those parties will each negotiate the terms of and then sign the covenant.

The Act assumes the owners of appropriate interests in contaminated property will be willing to sign the covenant. Cooperation is not always possible, however. State and federal regulatory systems make a number of parties, in addition to the current owner of a fee simple or some other interests, potentially liable for the cost of remediation of contaminated real property. As a result, a remediation project may proceed even though an owner is no longer present or interested in the property. In those circumstances, the remediation project would be conducted pursuant to

regulatory orders and could be financed either by other liable parties or by public funds. However, an environmental covenant may still be a useful tool in implementing the remediation project even in these situations.

When an owner is either unavailable or unwilling to participate in the environmental response project, it may be appropriate to condemn and take a partial interest in the real property in order to be able to record a valid servitude on it. Under the law of some states, states have the power to take that owner's interest by condemnation proceedings, paying the value of the interest taken, and then enter an environmental covenant as an owner. Where there is substantial contamination, the property may have little or no market value. In some states the court would take the cost of remediation into account in establishing the fair market value of the interest taken. *See*, e.g., *Northeast Ct. Economic Alliance, Inc. v. ATC Partnership*, 256 Conn. 813, 776 A.2d 1068 (2001). Although effective implementation of this Act may require that the state have a power of condemnation, this Act does not provide a substantive statutory basis for that power, and the state must therefore rely on other state law. Each state considering adoption of this Act should ensure that such a condemnation power is available for this purpose.

Similarly, while this Act provides substantive law governing creation, modification, and termination of environmental covenants, it does not include special administrative procedures for these and does not change the remedial decision making process. Rather, the Act presumes that the state's general administrative law or any specific procedure governing the environmental response project would apply to these activities.

"Actual" versus "Constructive" Notice of Contamination. The primary goal of the Act is to present to the states a statute that fully integrates environmental covenants into the traditional real property system. It seeks to ensure the long-term viability of those covenants by, among other means, providing constructive notice of those covenants to the world through resort to the land recording system.

Beyond that goal, it is very important to provide actual knowledge of the remaining contaminated conditions that the environmental covenants are designed to control. A broad range of stakeholders – children and adults that might inadvertently gain access to the contamination, tenants on the property, owners, abutting neighbors, prospective buyers, lenders,

government officials, title insurance companies, public health providers and others – will have a real personal and financial stake in knowing what properties in their communities suffer from contamination and the extent of the risks they confront. The fact that this law may provide legally sufficient knowledge of those conditions is no substitute for real information regarding those conditions.

The challenge of providing that information is beyond the scope of this Act. However, in analogous situations – the location of zoning districts, flood plain boundaries, utility easements, and dangerous street conditions, for example – governments have devised techniques to make the public aware of those conditions on a continuing basis. Techniques such as maps in recorders' offices, on-site signage and monuments and, increasingly, computer databases accessible to the public are examples of possible solutions. All such devices have fiscal implications and are best addressed on a local basis. Over the long term, however, the public will likely be well served by innovative solutions to these issues.

Legislative Policy. Finally, this Act does not include a section of policy and legislative findings, although some states may choose to use such a section. If such a section is desired, the Colorado Statute, C.S.R.A. §25-15-317, may be an appropriate model.

UNIFORM ENVIRONMENTAL COVENANTS ACT

SECTION 1. SHORT TITLE.

This [act] may be cited as the Uniform Environmental Covenants Act.

SECTION 2. DEFINITIONS.

In this [act]:

(1) "Activity and use limitations" means restrictions or obligations created under this [act] with respect to real property.

(2) "Agency" means the [insert name of state regulatory agency for environmental protection] or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(A) under a federal or state program governing environmental remediation of real property, including [insert references to state law governing environmental remediation];

(B) incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) under a state voluntary clean-up program authorized in [insert reference to appropriate state law].

(6) "Holder" means the grantee of an environmental covenant as specified in Section 3(a).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Comment

1. The following are examples subsection (1) activity and use limitations:

(1) a prohibition or limitation of one or more uses of or activities on the real property, including restrictions on residential use, drilling for or pumping groundwater, or interference with activity and use limitations or other remedies,

(2) an activity required to be conducted on the real property, including monitoring, reporting, or operating procedures and maintenance for physical controls or devices,

(3) any right of access necessary to implement the activity and use limitations, and

(4) any physical structure or device required to be placed on the real property.

The specific activity and use limitations in any covenant will depend on the nature of the proceeding in the environmental response project that led to the covenant. For example, in a major environmental response project where the administrative process was conducted by either a state or federal agency, the activity and use limitations would generally be identified in the record of decision and then implemented in the environmental covenant pursuant to this Act. In contrast, in a voluntary clean-up supervised by privately licensed professionals, as authorized in some states, the activity and use limitations would not be developed by the agency during an administrative proceeding but by the parties themselves and their contracted professionals.

Nothing in this Act prevents the use of privately negotiated use restrictions which are recorded in the land records, without agency involvement: the validity of such covenants, however, is not governed by this Act but by other law of the enacting state. *See* Section 5(d).

2. The governmental body with responsibility for the environmental response project in question is the agency under this Act. Generally, this agency will supply the public supervision necessary to protect human health and the environment in creating and modifying the environmental covenant.

In addition, as noted in Comment 1, the definition of "environmental response project" contemplates the possibility that the project may be undertaken pursuant to a voluntary clean-up program, where the actual determination of the sufficiency of the proposed clean-up is made by a pri-

vate professional party, rather than an agency. In this case, the definition contemplates that an agency - typically, the state environmental agency - will nevertheless be asked to consent to the environmental covenant by signing it. Section 4 of the Act makes clear that the covenant is not valid under this Act unless an agency signs it. Section 3 of the Act makes clear that the mere signature of the agency, without more, means only that the agency has "approved" the covenant in order to satisfy the definitional requirements of definition (2) and the mandated contents of Section 4. That signature imposes no duties or obligations on the agency.

3. The agency, for purposes of this Act, may be either a federal government entity or the appropriate state regulatory agency for environmental protection.

Further, in some cases, the appropriate federal agency may be the Environmental Protection Agency, the Department of Defense as 'lead agency' under federal law, or another body.

4. Section 4 of the Act makes clear that an environmental covenant is valid if only one agency signs it. However, in many circumstances, both a federal and a state agency may have jurisdiction over the environmental contamination that led to the environmental response project. In this situation, the best practice may be for both federal and state agencies with jurisdiction over the contaminated property to sign the environmental covenant.

5. Definition (4) states that an environmental covenant is a "servitude"; the term generally refers to either a burden or restriction on the use of real property, or to a benefit that flows from the ownership of land, that in either case "runs with the land" - that is, the benefit or the burden passes to successive owners of the real property.

The law of servitudes is a long established body of real property law. The term is defined in §1.1 of the Restatement (3d) of Servitudes as follows: "(1) A servitude is a legal device that creates a right or an obligation that runs with land or an interest in land." The Restatement goes on to provide that the forms of servitudes which are subject to that Restatement are "easements, profits, and covenants."

This Act emphasizes that an environmental covenant is a servitude in order to implicate this full body of real property law and to sustain the validity and enforceability of the covenant. By first characterizing the environmental covenant as a servitude, the Act expressly avoids the argument that an environmental covenant is simply a personal common law contract between the agency and the owner of the real property at the time the covenant

is signed, and thus is not binding on later owners or tenants of that land.

6. The definition of "environmental covenant" also provides that the servitude is created to implement an environmental response project. An environmental response project may determine, in some circumstances, to leave some residual contamination on the real property. This may be done because complete cleanup is technologically impossible, or because it is either ecologically or economically undesirable. In this situation, the environmental response project may impose activity and use limitations to control residual risk that results from contamination remaining in real property. An environmental covenant is then recorded on the land records as required by Section 8 to ensure that the activity and use limitations are both legally and practically enforceable.

7. An "environmental response project" covered by definition (5) may be undertaken pursuant to authorization by one of several different statutes. Definition (5)(a) specifically covers remediation projects required under state law. However, the definition is written broadly to also encompass both current federal law, future amendments to both state and federal law, as well as new environmental protection regimes should they be developed. Without limiting this breadth and generality, the Act intends to reach environmental response projects undertaken pursuant to any of the following specific federal statutes:

(1) Subchapter III or IX of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6921 to 6939e and 6991 to 6991i, as amended;

(2) Section 7002 or 7003 of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6972 and 6973, as amended;

(3) "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601 to 9647, as amended;

(4) "Uranium Mill Tailings Radiation Control Act of 1978", 42 U.S.C.sec.7901 et seq., as amended;

(5) "Toxic Substances Control Act", 15 U.S.C. 2601 to 2692, as amended;

(6) "Safe Drinking Water Act", 42 U.S.C. 300f to 300j-26, as amended;

(7) "Atomic Energy Act", 42 U.S.C. 2011 et. sec., as amended.

8. Definition (5)(C) extends the Act's coverage to voluntary remediation projects that are undertaken under state law. Environmental covenants that are

part of voluntary remediation projects may serve both the goal of environmental protection and the goal of facilitating reuse of the real property. However, approval of these projects by a governmental body or other authorized party ensures that the project serves these goals. Even though preparation of the clean-up plan and supervision of the work may be undertaken by private parties, this Act requires that covenants undertaken as part of a formal voluntary clean-up program must be approved by the agency as evidenced by the agency's signature on the covenant, in order to be effective under this Act.

9. Some states authorize properly certified private parties to supervise remediation to pre-existing standards and certify the cleanup. For example, in Connecticut and Massachusetts, these are "licensed site professionals". *See*, e.g., M.G.L. ch. 21A §19; 310 CMR 40.1071; C.G.S. §§22a-1330, 22a-133y. Supervision and certification by statutorily-authorized parties is intended to accomplish the same public function as supervision and certification by the governmental entity. Thus, these environmental response projects are also covered by this definition.

10. Under definition (5)(C), environmental response projects may include specific agreements between an owner and the agency for remediation that go beyond prevailing requirements. Alternatively, an owner may choose to contract with a potential purchaser for additional use restrictions in an instrument that does not purport to come within this Act; *see* Section 5(d). Because the owner may have residual liability for the site, even after remediation and transfer to a third party for redevelopment, the owner may require further restrictions as a condition of creating the environmental covenant and eventual reuse of the real property.

11. The definition of "holder" is in definition (6). As the practice of using environmental covenants continues to grow, new entities may emerge to serve as holders. This Act does not intend to limit this process. A holder may be any person under the broad definition of this Act, including an affected local government, the agency, or an owner. The identity of an individual holder must be approved by the agency and an owner as part of the process of creating an environmental covenant, as specified in Section 4. A holder is authorized to enforce the covenant under Section 11. A holder has the rights specified in Section 4 of this Act and may be given additional rights or obligations in the environmental covenant.

Section 3(a) makes clear that a holder's interest is an interest in real property. Some environmental enforcement agencies are not

authorized by their enabling legislation to own an interest in real property after the environmental remediation is completed. As a consequence, those agencies may not be entitled to serve as holders under the Act. In those cases where an agency wishes to be certain that a viable holder exists, a private entity may serve this purpose, acting, for example by contract, in accordance with the agency's direction.

More generally, the nature of a holder's interest in the real property may influence whether its rights and duties with respect to the real property are likely to lead to potential liability for future environmental remediation, should such remediation become necessary. Under CERCLA, an "owner" is liable for remediation costs; *see* 42 U.S.C.A. 9607(a)(1). Unfortunately, the definition of "owner" in the statute is circular and unhelpful in evaluating whether a holder is potentially liable under it. 42 U.S.C.A. 9601(20).

In general, a holder's right to enforce the covenant under Section 11 should be considered comparable to the rights covered in an easement and, thus, should not lead to a determination that the holder is liable as an "owner" under CERCLA. The two cases that have considered this question have found that the parties which held the easements were not CERCLA "owners". *Long Beach Unified School District v. Dorothy B. Godwin California Living Trust*, 32 F.3d 1364 (9th Cir. 1994); *Grand Trunk RR. v. Acme Belt Recoating*, 859 F. Supp. 1125 (W.D. MI 1994). In each case, the court reasoned that the circular definition of owner meant that the term's most common meaning would prevail. The common law's distinction between an easement holder and the property owner was then applied to find the easement holder not to be an "owner" for purposes of this statute. In each of these cases, the party that held the easement had not contributed to contamination on the property. The amendments to CERCLA Section 9601(35), Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, 115 Stat. 2360 (2002) (HR 2869, 107th Cong. 1st Session), added the term "easement" to the definition of parties which are in a "contractual relationship" under CERCLA. However, this does not affect whether the easement holder will be held to be a CERCLA "owner".

Where the holder or another person has more extensive rights than enforcement, a careful analysis will be required. The CERCLA liability cases typically emphasize that a party that exercises the degree of control over a site equivalent to the control typically exercised by an owner of the site will be held liable as an "owner". Under this approach, for example,

lessees have been held liable as owners when their control over the site approximated that which an owner would have. *See*, e.g., *Delaney v. Town of Carmel*, 55 F. Supp. 2d 237 (S.D.N.Y. 1999); *U.S. v. A & N Cleaners and Launderers*, 788 F. Supp. 1317 (S.D.N.Y. 1990); *U.S. v. S.C. Dept. of Health and Env. Control*, 653 F. Supp. 984 (D.C.S.C. 1984.) Accordingly, a holder contemplating extensive control over the site should consider potential "owner" liability carefully.

CERCLA liability also extends to an "operator" of the site (42 U.S.C.A. 9607(a)(1)), and the case law interpreting this definition emphasizes that a party is liable as an operator if it has a high degree of control over the operating decisi and day to day management at the site. Thus, for example, a party that held an easement could be liable as an operator if its degree of control met this standard. A holder will, in general, have only control authority over the site related to effective enforcement of the environmental covenant and does not typically need more extensive day to day control. However, this will not likely be true in all cases.

SECTION 3. NATURE OF RIGHTS; SUBORDINATION OF INTERESTS.

(a) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(b) A right of an agency under this [act] or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(c) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this [act] except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(2) This [act] does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to

be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Comment

Subsection (a) confirms that the holder holds an interest in real property, thus distinguishing that right from a personal or contractual right that does not run with the land. The definition of 'holder' in Section 2, departing from traditional real property concepts, makes clear that the holder may be the agency or the owner, thus making it possible for the owner to be both grantor and grantee.

Subsection (a) also makes clear that if the agency chooses to be the holder, the agency will thereby hold an interest in the real property. Otherwise, subsection (b) provides that the agency's interest in the covenant as a consequence of signing the covenant or having a right to enforce it under this Act is not an interest in real property.

Subsection (c) validates and confirms any contractual obligations that an agency may assume in an environmental covenant. So, for example, if the agency were to agree to authorize certain activities on the property, to undertake periodic inspections of the site or to provide notice of particular actions to specified persons, those undertakings and obligations would be enforceable against the agency in accordance with their terms by parties adversely affected by any breach.

At the same time, subsection (c)

also makes clear that the mere act of signing the covenant in order to signify the agency's 'approval' of the covenant, which is required by the Act as a condition of its effectiveness under this Act, is not an assumption of obligations and the agency has not thereby exposed itself to any liability. The agency manifests its approval of an environmental covenant by signing it.

Subsection (d) restates and clarifies traditional real property rules regarding the effect of an environmental covenant on prior recorded interests. The basic rule remains that pre-existing prior valid and effective interests – "First in time, first in right" – remain valid. As § 7.1 of the Restatement (3d) of Property: Mortgages states:

> "A valid foreclosure of a mortgage terminates all interests in the foreclosed real estate that are junior [that is, later in time] to the mortgage being foreclosed.... Foreclosure does not terminate interests ...that are senior...."

At the same time, it is not uncommon for interested parties to re-order the priorities among them by agreement in order to accommodate the economic interests of various parties. The usual device used to re-order priorities is a so-called 'subordination' agreement. Again, this section tracks the outcome suggested in *The Restatement (3d) of Property: Mortgages*. Section 7.7 of the Restatement provides in pertinent part that:

> A mortgage, by a declaration of its mortgagee, [that is, the lender] may be made subordinate in priority to another interest in the mortgaged real estate, whether existing or to be created in the future....A subordination that would materially prejudice the mortgagor [that is, the owner of the real estate] or the person whose interest is advanced in priority is ineffective without the consent of the person prejudiced.

The impact of the newly recorded environmental covenant on the priorities of other lien holders is sufficiently important that the Act emphasizes this issue both in this section and in Sections 8(b) and 9(c). In all these instances, the Act provides that the usual rules of priorities are preserved, except in the case of foreclosure of tax liens.

Thus, in preparing an environmental covenant, it might be advisable for the agency to identify all prior interests, determine which interests may interfere with the covenant protecting human health and the environment, and then take steps to avoid the possibility of such interference. The agency may do this by, for example, having the parties obtain appropriate subordi-

nation of prior interests, as a condition to the agency's approval of the environmental covenant.

The combined effect of Sections 3, 8 and 9 creates a curious "circular" lien problem, where (1) foreclosure of a 2003 municipal tax lien would terminate a 2000 pre-existing mortgage (the usual outcome), but (2) that same foreclosure would not affect the environmental covenant created in 2002 under this Act; while (3) foreclosure of the 2000 pre-existing mortgage would terminate the 2002 environmental covenant (again, the usual rule), but (4) not the 2003 municipal tax lien (also, the usual rule). Circular liens, however, are not unique to this situation.

SECTION 4. CONTENTS OF ENVIRONMENTAL COVENANT.

(a) An environmental covenant must:

(1) state that the instrument is an environmental covenant executed pursuant to [insert statutory reference to this [act].]

(2) contain a legally sufficient description of the real property subject to the covenant;

(3) describe the activity and use limitations on the real property;

(4) identify every holder;

(5) be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

(6) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) requirements for periodic reporting describing compliance with the covenant;

(3) rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) a brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) limitation on amendment or termination of the covenant in addition to those contained in Sections 9 and 10; and

(6) rights of the holder in addition to its right to enforce the covenant pursuant to Section 11.

(c) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

Comment

1. Subsection (a)(2) of this section requires that the covenant contain a "legally sufficient description" of the "real property" subject to the covenant. While these terms are familiar to real property practitioners, it may be useful to describe precisely what is required by this section.

First, a description of the real property that is "legally sufficient" will depend upon the practice of the enacting state. The purpose of such a requirement, for the real property practitioner, will be to assure that the particular parcel subject to the covenant will be properly indexed in the land records and thus readily located during the course of a title search. This, in turn, will enable a buyer, lender or other interest holder to be confident of what they own or hold as security.

The most commonly used legal

descriptions of land are: (1) a metes and bounds description - that is, a description that begins with reference to a known point on the surface of the earth, followed by references to distances and angles from that point to other monuments or terminals that mark the outer boundaries of the parcel; (2) reference to a recorded map or survey, that contains a "picture" of the metes and bounds description; (3) reference to a particular parcel number on a governmental grid system; and (4) a coordinates reference system, derived from a Global Positioning System or other mapping tool. These, and other generally obsolete forms of legal description [e.g., "starting at the black oak tree in the pasture, then running along a stone wall to Bloody Creek, then generally south and west along the creek to a dirt road, then back to the tree where you started, being the same 50 acres, more or less, conveyed to my father by Lisman"] may all serve the same purpose, and would meet the requirement of being "legally sufficient."

In contrast, as described in Comment 11 below, more precise measurements may be very useful for identifying precisely the "geospatial" location of sub-surface contaminants.

Second, the "real property" that is subject to the covenant may be narrowly or broadly defined, depending on the wishes of the parties. It may be, for example, that only a 3 acre portion of a 5,000 acre ranch is contaminated; in such a case, it may be unnecessary to describe all 5000 acres of real property as being subject to the covenant.

Alternatively, in a remote location, it may be that the 3 acre contaminated parcel owned by one person may be reached only by crossing a private road located on a 5000 acre ranch owned by another person. In such a case, a careful property description will want to include reference to the easement or other access right across the land owned by another person.

It is important to recognize, however, that real property is a three-dimensional concept (or a four-dimensional concept when one considers time as a dimension). A legal description of a particular parcel of real property which has only perimeter boundaries and no upper and lower boundaries encompasses both the surface of the earth within those boundaries, the airspace above the surface, all the dirt and minerals below the surface and all spaces within that volume of space that may be filled with water. Thus, in appropriate cases, a title searcher will need to be sensitive to cases where interests in the "real property" or "real property" have been sold or leased which leave the owner with less than all of the real property. A ten-year

lease of the entire parcel, for example, represents a time-defined "boundary" to the owner's interest in the real property in question. An agency seeking to identify all the interests in the parcel in order to secure their approval of a covenant will therefore want to ensure that a title search identifies all these interests.

2. This Act does not provide the standards for environmental remediation nor the specific activity and use limitations to be used at a particular site. Those will be provided by the state or federal agency based on other state and federal law governing mandatory and voluntary cleanups. This Act contemplates that those standards will then be incorporated into the environmental response project, which, in turn, will call for activity and use restrictions that can be implemented through creation of an environmental covenant. This section addresses creation of the environmental covenants.

3. Ordinarily, an environmental covenant will be created only by agreement between the agency and the owner. If there is a holder other than the agency or the owner, both the agency and the owner must approve the holder, and the holder must agree to the terms of the covenant. The agency may refuse to agree to an environmental covenant if it does not effectively implement the activity and use limitations specified in the environmental response project.

Where no owner is available or willing to participate in the environmental response project, it may be necessary for the agency to condemn and take an interest sufficient to record an environmental covenant on the property where it has the power to do so. This Act does not contain independent condemnation authority for the agency. Alternatively, in some states, there may be a basis for an agency to require an owner to cooperate with the implementation of the covenant as a regulatory matter.

4. This Act recognizes that there may be situations in which there is more than one fee simple owner. For example, Husband and Wife may own Blackacre as tenants in common, joint tenants, or tenants of the entirety. In all of these configurations of ownership, both Husband and Wife are owners of Blackacre and both must sign an environmental covenant unless the agency waives this requirement.

Similarly, it is common practice in mining states, such as Kentucky, West Virginia, Pennsylvania, for the fee ownership of the mineral interests to be conveyed separate and apart from the fee ownership of the remaining parcel. Thus, under the conventional real property practices of these states, there may be two separate fee ownership interests in the same "parcel"

of real property, and each owner must sign the environmental covenant unless this requirement is waived. It may be that those two owners of different interests in the same parcel have an agreement between them prohibiting separate conveyances of interests in the land without permission of the other. However, if that agreement does not appear of record, it would not run with the land, would likely not be binding on the agency [in the absence of the agency's actual knowledge] and thus not affect the validity of a covenant signed by one of the owners with respect to that owner's interest in the real estate.

5. In addition to the parties specified in Section 4(a)(5), other persons may wish to sign the environmental covenant and, in any event, the agency may require their signature as a condition of approving the covenant. (See Section 4(c)). Under current law, persons other than the owner may be liable for cleanup of the contamination, including contingent future liability if further cleanup is needed or personal injury claims are brought. These could be parties which previously used the property or whose waste was disposed of on the property. Such a person may have liability for some or all of the cost of the environmental response project and may thus have a compelling interest in signing the covenant so as to be informed of future enforcement, modification and termination.

6. Section 4(a)(5) also authorizes the agency to waive the requirement that the covenant be signed by the owner of the fee simple. The Act contemplates that such waivers should be rare because in most situations the covenant can be effective only if the fee owner's interest is subject to the covenant. However, in some circumstances the fee owner may have transferred most or all of the economic value of the property to the holder of another interest, either permanently or for the time period during which the covenant's restrictions are needed. Consider, for example, the situation in which the contamination remaining presents environmental risks for only twenty years and the property is subject to a ninety-nine year lease. In this case, it is critical that the owner of the leasehold interest be a party to the covenant so its interest will be subject to it. However, in this situation, the fee owner's participation is not essential for the covenant to protect human health and the environment. If the fee owner is unavailable or unwilling to participate, the agency might choose to waive its signature. Of course, such a situation, when the likely duration of the covenant is both short and clearly known, is likely to be exceptional.

7. A holder is the grantee of the

environmental covenant and the Act requires that there be a holder for a covenant to be valid and enforceable. Under Section 5(b)(9), the grantee may also be the grantor, who is the owner of the property and who might remain a holder upon sale of the property, or the agency. In addition to enforcement rights, the holder may be given specific rights or obligations with respect to future implementation of the environmental covenant. These could include, for example, the obligation to monitor groundwater or maintain a cap or containment structure on the property. Such rights and obligations will be specified in the environmental covenant and, like any obligations, would be enforceable against the holder if the holder failed to satisfy its obligations.

8. Section 4(a)(5) requires an agency to sign the covenant. In some states it may be necessary to amend the state agency's enabling statute to empower it to so sign.

9. Section 4(a)(6) requires the covenant to disclose the "name and location of any administrative record" for the underlying environmental response project. Typically, this information will require a docket or file number, identifying names of the parties, and an indication of the agency office in which the record of decision or other administrative record has been retained. In those cases where a state-wide registry is maintained, the registry also requires this information. In the case of voluntary clean-ups, of course, there may be an administrative record.

Section (4) (b) is a permissive provision intended by the breadth of its provisions ("...may contain other information ...agreed to by the persons who signed it...") to encourage the agency and the other parties to include provisions in the particular covenant that are tailored to the specific needs of that project. This may well be accomplished in order to maximize the likelihood that the covenant, when properly implemented and monitored, will protect human health and the environment.

Persons dealing with this Act must recognize that no statute and no commentary can fully contemplate all the possibilities that are likely to arise in implementation of this Act. This issue permeates this subsection. In (b)(1), for example, the text contemplates the possibility that the agency may, in a particular case, require an owner or other persons to notify the agency before, among other things, that party applies for "...building permits." The suggested language is not intended to exclude notice of any other type of work permit that might trigger a violation of an environmental covenant, such as, for example, drilling or excavation permits.

10. Section 4(b)(4) suggests that, in an appropriate case, the agency may wish to provide a summary of the contamination on the site and the remedial solutions that have been identified. From a public health perspective, this may be very useful. The reference to "pathways of exposure" requires a statement that, for example, the contaminant might be of danger if it comes in contact with skin, if breathed, or only if ingested.

11. Section 4(b)(4) also suggests that, in an appropriate case, the agency may require the covenant to contain not only a legally sufficient description of the real property subject to the covenant (as mandated under section 4(a)(2)) but also the 'location of the contamination."

One way of identifying such location is by the concept of "geospatial" location as defined by the Federal Geographic Data Committee of the U.S. Geological Survey. Such an identification would define the location with geospatial data, which the Committee defines as follows:

> Geospatial Data: Information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the Earth. This information may be derived from, among other things, remote sensing, mapping, and surveying technologies. Statistical data may be included in this definition....

Depending on the nature of the contamination and the size of the parcel subject to the covenant, a description of the "geospatial location" of the contamination and the legal boundary description of the real property parcel on which those contaminants are located may be very different, and the kinds of information required to usefully describe the "location" of the contamination may also differ. As a simple example, it may be appropriate to use grid coordinates and projected elevations below ground level to define the upper and lower levels of a groundwater contamination plume, together with sensing or other data that projects the mobility of that plume over time, in order to accurately provide useful information that a simple metes and bounds description could not convey.

12. Subsection (b)(5) contemplates that the environmental covenant may impose additional restrictions on amendment or termination beyond those required by this Act. For example, in some circumstances the owner or another party who may have contingent residual liability for further cleanup of the real property subject to the environmental covenant, may seek further restrictions in the covenant

to protect against this contingent liability.

13. Subsection (c) confirms that the agency is under no obligation to approve a particular environmental covenant by signing it. This may be particularly significant in those cases where the agency was unable to secure subordination of prior interests in the real property which is proposed to be subject to the covenant. If a prior security or other interest is not subordinated to the environmental covenant, and then is foreclosed at some later time, under traditional real property law that foreclosure would extinguish or limit an environmental covenant. Since such an outcome is antithetical to the policies underlying this Act, the Act contemplates that the agency may, before agreeing to the covenant, require subordination of these interests. At the time of creation of the environmental covenant, the agency must determine whether the prior interest presents a realistic threat to the covenant's ability to protect the environment and human health. Section 3 of the Act makes clear that by subordinating its interest, an owner of a prior interest does not change its liability with respect to the property subject to the environmental covenant. Any such liability of a subordinating party would arise by operation of other law and not under this Act.

Subsection (c) contemplates that there are many circumstances that might cause an agency, in the exercise of its regulatory discretion as defined in other law, either refuse to sign a covenant in the form presented, or to agree to sign it only upon satisfaction of specified conditions. The listing of the following examples is intended to be illustrative, not exhaustive.

Example 1: As a condition of signing the covenant, the agency requires the owner to provide an abstract of title of the property to be subjected to the covenant. If the owner declines to do so, the agency may reasonably be expected to decline to approve the covenant, since it will have insufficient evidence of the priority of its new covenant.

Example 2: The owner provides the title abstract, which discloses that the property to be subjected to the covenant is presently subject to a first mortgage for $5 million. The agency's decision to condition its approval on the first lender's willingness to subordinate to the covenant would plainly be appropriate.

Example 3: The agency's policies require that an independent company regularly engaged in the business of monitoring and enforcing environmental covenants on behalf of the agency be named as 'holder' in the covenant. The owner's refusal to agree to such a provision would justify an agency's refusal to approve the covenant.

SECTION 5. VALIDITY; EFFECT ON OTHER INSTRUMENTS.

(a) An environmental covenant that complies with this [act] runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to a person other than the original holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) the benefit or burden does not touch or concern real property;

(7) there is no privity of estate or contract;

(8) the holder dies, ceases to exist, resigns, or is replaced; or

(9) the owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of

this [act] is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) or because it was identified as an easement, servitude, deed restriction, or other interest. This [act] does not apply in any other respect to such an instrument.

(d) This [act] does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

Comment

1. Subsection (a), when considered with the common law, makes clear that environmental covenants will be binding not only on the persons who originally negotiate them but also on subsequent owners of the property and others who hold an interest in the property, such as tenants, so long as those owners and others have actual or constructive knowledge of the covenant.

To be binding on future owners who may not have actual knowledge of the covenant, the Act requires that the covenant comply with all provisions of the Act. Section 8(a) of this Act requires the covenant to be recorded. The Act then states the usual real property rule that a recorded instrument "runs with the land" and binds all who have an interest in it.

2. Recording requirements are an important means by which the law protects 'bona fide purchasers' - BFP's - who acquire property without knowledge of its conditions. Even in the absence of recording a document on the land records, the common law has long held that those who have actual knowledge of the document take title subject to the document. A BFP, on the other hand, is bound at common law only by an instrument affecting the real property to the extent the BFP has constructive knowledge of the document.

Importantly, a BFP is charged with constructive knowledge of the land records. In some respects, one of the fundamental tensions between traditional real property law and environmental law is the change in this rule, by which environmental law seeks to impose liability on "innocent" purchasers of contaminated property who take without knowledge of the property's condition and may have

no practical means of learning of its condition. To the extent this Act tracks traditional real property practice by requiring recorded covenants, this tension may be considerably lessened.

3. Subsection (b) and its comments are modeled on Section 4 of the Uniform Conservation Easement Act. One of the Environmental Covenant Act's basic goals is to remove common law defenses that could impede the use of environmental covenants. This section addresses that goal by comprehensively identifying these defenses and negating their applicability to environmental covenants.

This Act's policy supports the enforceability of environmental covenants by precluding applicability of doctrines, including older common law doctrines, that would limit enforcement. That policy is broadly consistent with the Restatement of the Law Third of Property (Servitudes), including §2.6 and chapter 3. For specific doctrines see §§ 2.4 (horizontal privity), 2.5 (benefitted or burdened estates), 2.6 (benefits in gross and third party benefits), 3.2 (touch and concern doctrine), 3.3 (rule against perpetuities), and 3.5 (indirect restraints on alienation).

Subsection (b)(1) provides that an environmental covenant, the benefit of which is held in gross, may be enforced against the grantor or his successors or assigns. By stating that the covenant need not be appurtenant to an interest in real property, it eliminates the requirement in force in some states that the holder of an easement must own an interest in real property (the "dominant estate") benefitted by the easement.

Subsection (b)(2) also clarifies existing law by providing that a covenant may be enforced by an assignee of the holder. Section 10(c) of this Act specifies that assignment to a new holder will be treated as a modification and Section 10 governs modification of environmental covenants.

Subsection (b)(3) addresses the problem posed by the existing law's recognition of servitudes that served only a limited number of purposes and that law's reluctance to approve so-called "novel incidents". This restrictive view might defeat enforcement of covenants serving the environmental protection ends enumerated in this Act. Accordingly, subsection (b)(3) establishes that environmental covenants are not unenforceable solely because they do not serve purposes or fall within the categories of easements traditionally recognized at common law or other applicable law.

Subsection (b)(4) deals with a variant of the foregoing problem. Some applicable law recognizes only a limited number of "negative easements" – those preventing the

owner of the burdened real property from performing acts on his real property that he would be privileged to perform absent the easement. Because a far wider range of negative burdens might be imposed by environmental covenants, subsection (b)(4) modifies existing law by eliminating the defense that an environmental covenant imposes a "novel" negative burden.

Subsection (b)(5) addresses the opposite problem – the potential unenforceability under existing law of an easement that imposes affirmative obligations upon either the owner of the burdened real property or upon the holder. Under some existing law, neither of those interests was viewed as a true easement at all. The first, in fact, was labeled a "spurious" easement because it obligated an owner of the burdened real property to perform affirmative acts. (The spurious easement was distinguished from an affirmative easement, illustrated by a right of way, which empowered the easement's holder to perform acts on the burdened real property that the holder would not have been privileged to perform absent the easement.)

Achievement of environmental protection goals may require that affirmative obligations be imposed on the burdened real property owner or on the covenant holder or both. For example, the grantor of an environmental covenant may agree to use restrictions and may also agree to undertake affirmative monitoring or maintenance obl[illegible] tions. In addition, the covenant might impose specific engineering or monitoring obligations on the holder, which may be a for profit corporation, a charitable corporation or trust holder. In all these cases, the environmental covenant would impose affirmative obligations and Subsection (b)(5) makes clear that the covenant would not be unenforceable solely because it is affirmative in nature.

Subsections (b)(6) and (b)(7) preclude the touch and concern and privity of estate or contract defenses, respectively. They have traditionally been asserted as defenses against the enforcement of covenants and equitable servitu[illegible]

Subsection (b) (8) addresses the possibility that the holder may have died or for other reason fails to exist. Failure of the holder ought not invalidate the covenant and Sections 10(c) and (d) authorize replacement of a holder in various circumstances.

Subsection (b) (9) addresses the case where an owner of a contaminated parcel may agree to remedy an existing condition and may further agree to serve as holder in order to perform the necessary tasks. Under this Act, the owner may be willing to do so because Section 4 of the Act requires that a holder be

named and the owner may not be inclined to create an interest in a stranger. Under these circumstances, the owner's name would appear as both the grantor and the grantee in the land records, and this outcome ought not invalidate the covenant.

Subsection (b) identifies the principal common law doctrines that have been applied to defeat covenants such as those created by this Act. Drafters in individual states may wish to consider whether references to other common law or statutory impediments of a similar nature ought to be added to this subsection.

Subsection (c) addresses the treatment of instruments recorded before the date of this Act that seek to accomplish the purposes of environmental covenants under this Act. It seeks to validate such instruments, in a limited way, by specifying that the defenses covered in subsection (b), or the fact that the instrument was identified as something other than an environmental covenant, will not make prior covenants unenforceable. Beyond negating these specific defenses, however, this Act does not apply to those prior covenants. If the parties to a prior covenant wish to have the other benefits of this Act for that covenant, they must re-execute the covenant in a manner which satisfies the requirements of this Act.

Section (d) is a general savings clause for other interests in real property and other agreements concerning environmental remediation which are not covered under this Act. It disavows the intent to invalidate any interest created either before or after the Act which does not comply with the Act but which otherwise may be valid under the state's law. Nor does the Act intend, in any way, to validate or invalidate an action taken by a person to remediate contamination that is taken without formal governmental oversight or approval. A recorded instrument that does not satisfy the requirements of this Act does not come within the scope of this Act; it does not enjoy the protections of this Act and must be evaluated under other law of the state.

For example, the Act is clear that its requirements apply only to land use restrictions placed on real property pursuant to an "environmental response project" as that term is defined in the Act. If private parties choose to use conventional deed restrictions or other devices to place further activity and use restrictions on a parcel, nothing in this Act would affect that contractual arrangement either to insulate it from attack as invalid under that state's other law or to invalidate it under this law.

SECTION 6. RELATIONSHIP TO OTHER LAND-USE LAW.

This [act] does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this [act] regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this [act].

Comment

This section clarifies that this Act does not displace other restrictions on land use laws, including zoning laws, building codes, sanitary sewer or subdivision requirements and the like. Restrictions under those laws apply unchanged to real property covered by an environmental covenant.

Where other law, including either a state or federal environmental response project, requires structures or activities in order to perform the environmental remediation, the status of those requirements is likely to be determined by that other law and not by this Act. Thus, for example, where the environmental covenant is implementing an environmental response project under federal CERCLA law, a federal appellate court has held that the federal law authorizing the environmental response project preempts a conflicting city ordinance. *U.S. v. City and County of Denver*, 100 F.3d 1509 (10th Cir. 1996).

Clearly, the large and comp body of zoning and land use law and the law of environmental regulation supplement the provisions of this Act. In appropriate cases, a court will be called upon to articulate the interrelationship of this Act and those laws, and the Act does not attempted to articulate all those outcomes. On the other hand, certain obvious examples may be helpful in understanding this interplay.

First, the Act contemplates that an environmental covenant might, for example, prohibit residential use on a parcel subject to a covenant. Under conventional real property principles, without references to this

Act, such a prohibition or restriction in an environmental covenant will be valid even if other real property law, including local zoning, would authorize the use for residential purposes.

Alternatively, a covenant might, at the time it is recorded, permit both retail use and industrial use on a vacant parcel of contaminated real property while prohibiting residential use. Assuming all retail and industrial uses were permitted by local zoning at the time the covenant is recorded, the municipality might, before construction begins, change that zoning to bar industrial use. If such a zone change is otherwise valid under state law, nothing in this Act would affect the municipality's ability to "down zone" the parcel.

If, on the other hand, an industrial use was existing and ongoing at the time the covenant was recorded, and an effort was then made to prohibit that use by ordinance, such state law doctrines as "vested rights" or non-conforming uses, rather than this Act, would govern the validity of the zoning action.

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SECTION 7. NOTICE.

(a) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

(1) each person that signed the covenant;

(2) each person holding a recorded interest in the real property subject to the covenant;

(3) each person in possession of the real property subject to the covenant;

(4) each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) any other person the agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Comment

This section contemplates that the agency will normally require that the final signed environmental covenant be sent to affected parties. In addition to the obvious persons who should be notified, in an appropriate case, the agency might require notice to abutting property owners. These persons are likely to have been directly involved in any major administrative proceeding, but in other cases, such as a voluntary clean-up, they may have no knowledge of the existing conditions on abutting land.

In any event, the extent and manner of giving notice rests in the discretion of the agency, and the statute imposes an affirmative duty on the persons required to provide that notice to comply.

Subsection (b) provides that failure to provide a copy of the covenant does not invalidate the covenant. Such a failure will not prevent the covenant from protecting human health and the environment and thus need not invalidate the covenant. The remedy for such a failure would be provided by other law.

SECTION 8. RECORDING.

(a) An environmental covenant and any amendment or termination of the covenant must be recorded in every [county] in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in Section 9(c), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

Comment

Subsection (a) confirms that customary indexing rules apply to the covenant. Since the owner is granting the enforcement right to a holder, all the owners' names would appear in the grantor index and the holder's name would appear in the grantee index.

In those states where a tract or another recording system other than a grantor/grantee index is used, this section should be revised as appropriate.

The Act assumes that all parties will wish to record the environmental covenant and accordingly makes the state's recording rules apply. As between the parties, however, the effectiveness of the covenant does not depend on whether the covenant is recorded. A signed but unrecorded covenant, under traditional real property law, binds the parties who sign it and, generally, those who have knowledge of the covenant.

The Act makes clear that, as with all recorded instruments, an environmental covenant takes priority under the normal rules of "First in time, First in Right." *See* The Restatement of The Law Third Property–Mortgages § § 7.1 and 7.3. In that sense, the covenant does not enjoy the same priority afforded real property tax liens, because of the substantial constitutional impediment such a change in priority would likely create.

However, the Act departs in important ways from the consequences of the normal priority and other traditional rules. For example, under Section 9, foreclosure of a tax lien cannot extinguish an environmental covenant. *See*

Section 9(c).

Finally, in those case where the holder's interest is transferred to a successor holder, the assignment of that interest will be recorded, and the usual grantor/grantee indexing rules would apply. Note, however, that under Section 10(d), the assignment would be treated as an amendment of the covenant.

Recording of an environmental covenant pursuant to the law of this state provides the same constructive notice of the covenant as the recording or any other instrument provides of an interest in real property.

SECTION 9. DURATION; AMENDMENT BY COURT ACTION.

(a) An environmental covenant is perpetual unless it is:

(1) by its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) terminated by consent pursuant to Section 10;

(3) terminated pursuant to subsection (b);

(4) terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) terminated or modified in an eminent domain proceeding, but only if:

(A) the agency that signed the covenant is a party to the proceeding;

(B) all persons identified in Section 10(a) and (b) are given notice of the pendency of the proceeding; and

(C) the court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in Section 10(a) and (b) have been given notice, may

terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to [insert reference to appropriate administrative procedure act].

(c) Except as otherwise provided in subsections (a) and (b), an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(d) An environmental covenant may not be extinguished, limited, or impaired by application of [insert reference to state Marketable Title and Dormant Mineral Interests statutes].

Comment

1. Subject to the other provisions in this Act, environmental covenants are intended to be perpetual, as provided in subsection (a). A covenant may be limited by its terms as provided in this Section, or amended or terminated under Section 10. Alternatively, in the limited circumstances described in this Section it may be modified in an eminent domain proceeding which meets the requirements of Subsection (a)(5). With concurrence of the agency, an environmental covenant may also be terminated in a judicial proceeding asserting "changed circumstances" as provided in Subsection (b).

2. Subsection (a)(5) provides special requirements to modify or terminate an environmental covenant by an exercise of eminent domain. The rationale for these special requirements is that an exercise of eminent domain may result in a change of use for real property. Such a change must ensure that it does not increase environmental risk related to the real property.

The Act does not attempt to resolve all the many complex issues

likely to arise when one government agency seeks to condemn an environmental covenant imposed another agency pursuant to an agreement with a current or former owner of the property. For example, eminent domain may result in a change of use of that property. If the changed use requires termination of the covenant's existing activity and use limitations, and thus additional clean-up of the property, complex questions of liability and financial responsibility may arise. Alternatively, state law may already address questions of which governments have or do not have authority to condemn real property, or who are necessary or indispensable parties. State statutes are also likely to have so-called "quick take" provisions, a well developed Administrative Procedures Act, and other important provisions for aspects of condemnation proceedings beyond the scope of this Act.

Section 9(a)(5) has specific requirements for an exercise of eminent domain that modifies or terminates an environmental covenant. The applicability of this Act's eminent domain requirements to an eminent domain action under federal law will be determined by that law.

On the other hand, if the eminent domain proceeding were to go forward without the need to terminate or amend the environmental covenant, the existing covenant would remain in place and then the approval required by this subsection of the Act would not apply.

3. Subsection (b) imposes two specific requirements for a judicial change in an environmental covenant under the doctrine of changed circumstances. The first requires agency approval of such an application. The second requires that all parties to the covenant be given notice of the proceeding. This will allow those parties to protect their interests in the proceeding, including their interests arising from contingent future liability.

The Act intends that a court, in considering this section, would apply the doctrine of changed circumstances in its traditional sense – that is, as a proposed modification of the covenant to reduce or eliminate its burden. This section does not provide a substitute procedure for modifying a covenant to increase the burden on the real property. Such an outcome would be antithetical to the careful balancing of interests embedded in the Act. It would also be inconsistent with the expectations of owners and legally liable parties who have entered into the covenant with an expectation that the burden would not be increased except pursuant to the procedures set out in this Act.

4. Subsection (c) provides that environmental covenants are not extinguished by later tax foreclosure sales, or by a range of potential common law and statutory impairments. As a matter of public policy, these new forms of covenants seek to protect human health and the environment and, presumably, the contamination of the real property that led to the activity and use limitations would still be present if the covenant were extinguished. Accordingly, the impairment of those limitations as a consequence of application of tax lien foreclosure or other doctrines would likely result in greater exposure to health risk. Thus termination of that protection to serve other public policies of governments seems inconsistent.

In contrast, to avoid any suggestion of impairment of contract, the Act confirms that prior mortgages and other lien holders, upon foreclosure, may extinguish a subsequent covenant that was not subordinated. The lien holder in that case, of course, would still be faced with the physical condition of the property and the agency would have whatever regulations and rights against such an owner that state and federal law afforded.

5. While this section imposes statutory constraints on the authority of the court to act in the first instance, the Act does not restrict application of other procedural and administrative law to judicial supervision of agency conduct. Thus, if a court were to determine that an agency has acted in violation of its statutory obligations in considering whether to approve a modification or termination of an environmental covenant, that conduct would be itself be subject to judicial scrutiny under other law of that state.

Where an environmental covenant applies to real property that is otherwise subject to one of the doctrines listed in Subsection (c), circumstances may arise in which the protections of the covenant are not needed. For example, rights gained by adverse possession would be limited by the environmental covenant's restrictions where a house had been inadvertently placed on real property subject to an environmental covenant that precluded residential use. In a case such as these, modification of the covenant can be sought pursuant to Section 10. Seeking such a modification will ensure that appropriate consideration will be given to residual environmental risks.

The basic policy of this Act to ensure that environmental covenants survive impairment is consistent with the broad policy articulated in the Restatement of the Law of Property (Servitudes) Third, §7.9.

States that do not have a Marketable Record Title Act or a Dominant Mineral Interests Act will not need subsection (d). States that

do have a either or both of these acts may choose to put this exception in the respective statute rather than in this Act.

The exception to the Marketable Record Title Act and the Dormant Mineral Interests Act in optional (d) is analogous to exceptions commonly made for conservation and preservation servitudes. Restatement of the Law of Property Third (Servitudes) § 7.16 (5) (1998). It is based on the public importance of ensuring continued enforcement of environmental covenants to protect human health and the environment. For states adopting the registry of environmental covenants to be kept by the [insert name of state regulatory agency for environmental protection] under Section 12 of this Act, the cost of extending title searches to this registry should be low.

If there is any question whether a specific environmental covenant is exempt from the requirements of the Marketable Record Title Act or the Dominant Mineral Interests Act, the agency should comply with that Act by re-recording the covenant within the relevant act's specified statutory period. This will ensure that the covenant is not extinguished under either of these acts.

Finally, the fact that the Act specifies that notice of either an eminent domain proceeding or an action to apply the doctrine of changed circumstances be given to persons identified in Section 10 does not mean that other persons might not also be entitled to notice of the action or to intervene as parties in the action under other legal principles. Other state law may require such notice and this Act does not affect such other, additional notice requirements.

SECTION 10. AMENDMENT OR TERMINATION BY CONSENT.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) the agency;

(2) unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(3) each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) except as otherwise provided in subsection (d)(2), the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in an environmental covenant:

(1) a holder may not assign its interest without consent of the other parties;

(2) a holder may be removed and replaced by agreement of the other parties specified in subsection (a); and

(e) a court of competent jurisdiction may fill a vacancy in the position of holder.

Comment

1. A variety of circumstances may lead the parties to wish to amend an environmental covenant to change its activity and use limitations or to terminate the covenant.

Subsection (a) specifies the parties that must consent to the amendment. Subsection (a)(3) reaches a party that originally signed the covenant whether or not it was an owner of the real property. Such parties might typically be ones which were liable for some or all of the environmental remediation specified in the environmental response project, including contingent liability for future remediation. This provision is intended to apply to successors in interest to the party which originally signed the covenant where the successor continues to be subject to the contingent liability under the environmental response project.

Some of the original parties to the covenant may have signed the covenant because they have contingent liability for future remediation should it become necessary. The extension of that liability to successor businesses is a complex subject controlled by the underlying state or federal environmental law creating the liability. *See* Blumberg, Strasser and Fowler, *The Law of Corporate Groups: Statutory Law, 2002 Annual Supplement*, §18.02 and §18.02.4 (Aspen, 2002) and Blumberg and Strasser, The Law of Corporate Groups: Statutory Law–State §§ 15.03.2 and15.03.3 (Aspen, 1995). Where the party that originally signed the covenant has been merged into or otherwise become part of another business entity for purposes of future cleanup liability, subsection (a)(3) is intended to require the consent of that successor entity rather than the consent of the original party.

2. In considering the potential liability of successor businesses, as discussed above, it is important to understand the dual chains of successors that a particular circumstance presents – (1) successors to ownership of the business that originally caused the contamination; and (2) successors to

owners of the contaminated real property. Particularly when contamination occurred many years ago, those chains of successors may be very different.

Consider this hypothetical – although very typical – situation:

Real Property Ownership In 1925, Peter Plating, Inc. built a factory on a 3-acre lot in Hartford, CT and commenced its business, which was to apply chromium plating to coffee pots on that site. Customary business practice at the time was to discharge the exhausted chromium into "sumps" - holes dug in the ground, and filled with large stones. Peter Plating did this for 25 years.

In 1950, Peter Plating closed its Hartford plating operation, and sold the land and factory to Rabbit Warehouses, Inc. Rabbit used the factory for 25 years as a storage facility, then sold the factory in 1975 to Ernie Entrepreneur, an individual, who bought the land with the proceeds of a first mortgage from First Local Bank.

Ernie used the factory for light manufacturing until 1985. He also leased part of the site to Acme Auto Repair, Inc. Acme dumped used oil and degreasers into its own sump on the lot. At some unknown date, Acme ceased operations.

In 1985, after Ernie learned of the contamination, he transferred ownership of the land to a corporation – Ernie, Inc. Ernie and his wife owned all the stock of the new corporation. In 1986, Ernie ceased operations, abandoned the factory, and moved with his family to island off North Carolina. Ernie, Inc. was later administratively dissolved under state law for failure to file its annual reports.

First Local Bank started foreclosure in 1986, learned of the contamination, and withdrew the foreclosure action because of its reluctance to be in the chain of title. The Bank still holds the mortgage, but long ago wrote off the debt on its books.

Real property taxes have not been paid since 1984. City officials started to foreclose for unpaid taxes, but when they learned of the contamination, they, like First Local Bank, decided not to foreclose.

In 2002, the City demolished the factory as a safety measure, put a fence around it and put a $200,000 demolition lien on the property. Today, the site is abandoned, and neighborhood children play games on the lot after crawling under the fence. Clean-up costs are estimated at $1.6 million; a "clean" 1.5-acre lot in this run-down neighborhood recently sold for $50,000.

The traditional "chain of title" doctrine in real property suggests that successive owners and operators of the real property, beginning with the original owner or tenant

that caused contamination of the real property, may all have potential liability. In chronological order, they include: (1) Peter Plating, Inc.; (2) Rabbit Warehousing, Inc. (3) Ernie Entrepreneur, individually; (4) Acme Auto Repair, Inc.; and (5) Ernie, Inc.

Stock and Asset Ownership Aside from the successor real property ownership, we must also consider the successor ownership of the business that caused the contamination. Assume that 100% of Peter Plating's stock was acquired by a publicly- held corporation, Jefferson, Inc., in 1950. The parent corporation moved the plating business to a southern state, which is why the Hartford business closed. In 1970, Jefferson sold off the plating assets, but no stock, to Hiccup, PLC, a publicly traded British corporation. Both Jefferson and Hiccup are still in business.

This chain of stock and asset sales should result in at least one and perhaps two additional "successors" whose role in the transaction may require further analysis.

Assume this Act had been in effect in 1940, and Peter Plating, Inc. had signed the original environmental covenant. If the agency wishes in 2003 to amend the 1940 covenant, it will be important to determine who must sign on behalf of Peter Plating – the person who originally signed the covenant in 1940 – as required by subsection 10 (a) (3).

3. Note also that Ernie, Inc. – the current owner – has abandoned the property and moved out of state. Neither this corporation or Ernie Entrepreneur, as an individual, is likely to cooperate in signing a new covenant today or an amendment to an original covenant that was signed in 1940. This may pose practical difficulties in satisfying the requirements of Section 10)(a)(2).

4. In order to secure the consents required by this section, it is likely that the agency will require the party seeking the amendment to provide notice to the parties whose consent is required by the statute.

5. Note that this section does not require the consent of intermediate owners of the real property – in our example, if the original owner in 1940 was Peter Plating, and the current owner is Ernie, Inc., then Rabbit Warehouses, Inc., would not be required to approve an amendment to the covenant. Rabbit would have been bound by the covenant when it bought the parcel in 1975. Since there is no allegation that Rabbit took any action in violation of the covenant, and Rabbit conveyed the property to Ernie without retention of any interest in the property, Rabbit would not be affected by the covenant and therefore need not sign the amendment.

6. Finally, the covenant may be amended or terminated with respect only to a portion of the real property that was originally subject to the covenant. Thus, for example, if a covenant originally covered 100 acres of real property and as a result of remediation activity, 50 acres of the site eventually became completely free of contamination and pose no further environmental risk, the parties might agree to terminate the activity and use limitations on the cleaned up 50 acres while leaving the covenant in place on the remaining land.

7. As provided in Section 11(b), this Act does not limit the agency's regulatory authority under other law to regulate an environmental response project and the agency may be well advised to consider the implication of this provision in drafting a specific environmental covenant. Thus, for example, if new science suggested a need for additional monitoring or remediation at a contaminated site beyond that mandated in a recorded environmental covenant applicable to that site, the agency's authority to require that additional work would depend on other law, while its authority to impose the remediation cost on other parties may depend both on that law and on the terms of any prior agreements the agency may have executed with potentially liable parties.

Under this Act, however, the agency would be prevented from administratively releasing or amending real property covenants without approval of the parties designated in this section. Given the potential legal liability of the parties in the two chains of title who may be affected by an amendment to or termination of the covenant, this is an appropriate outcome.

However, over time, it may not be practical to identify the original parties or their corporate successors in order to secure their consent. Section 10(a)(3) provides a judicial mechanism by which the need for absent parties' consent may be avoided.

The same section highlights the possibility that the agency might seek the agreement of the original parties to future amendments of the covenant, without the need for later consent. Such a waiver might be attractive to original parties, depending on the extent to which the agency was willing to hold original parties harmless from the liability that might otherwise accrue from a claimed injury following a use once prohibited by the original covenant, and depending also on the overall cost of the transaction.

Where there is a change in either the current knowledge of remaining contamination or the current understanding of the environmental risks it presents, the agency may conclude that the en-

vironmental response project should be changed or new regulatory action taken. The agency's ability to require such action is contemplated by Section 3.1(b) but, in the absence of consent, is not governed by this Act.

The agency may wish to consider whether the following parties have a sufficient interest in a particular proposal to make notice of the proposed amendment to them advisable:

(1) All affected local governments;

(2) The state regulatory agency for environmental protection if it is not the agency for this environmental response project;

(3) All persons holding an interest of record in the real property;

(4) All persons known to have an unrecorded interest in the real property;

(5) All affected persons in possession of the real property;

(6) All owners of the fee or any other interests in abutting real property and any other property likely to be affected by the proposed modification;

(7) All persons specifically designated to have enforcement powers in the covenant; and

(8) The public.

The agency may also wish to consider whether the notice should include any of the following:

(1) New information showing that the risks posed by the residual contamination are less or greater than originally thought;

(2) Information demonstrating that the amount of residual contamination has diminished; and

(3) Information demonstrating that one or more activity limitations or use restrictions is no longer necessary.

SECTION 11. ENFORCEMENT OF ENVIRONMENTAL COVENANT.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) a party to the covenant;

(2) the agency or, if it is not the agency, the [insert name of state regulatory agency for environmental protection];

(3) any person to whom the covenant expressly grants power to enforce;

(4) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) a municipality or other unit of local government in which the real property subject to the covenant is located.

(b) This [act] does not limit the regulatory authority of the agency or the [insert name of state regulatory agency for environmental protection] under law other than this [act] with respect to an environmental response project.

(c) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

Comment

1. Subsection (a) specifies which persons may bring an action to enforce an environmental covenant.

2. Importantly, the Act seeks to distinguish between the expanded rights granted to enforce the covenant in accordance with its terms, and actions for money damages, restitution, tort claims and the like.

This Act confers standing to enforce an environmental covenant on persons other than the agency and other parties to the covenant because of the important policies underlying compliance with the terms of the covenant. Thus, for example, in the case of a covenant approved by a federal agency on real property which has been conveyed out of federal ownership, the Act confers standing on a state agency to enforce the covenant, even though the agency may not have signed it. Further, a local affected government is empowered to seek injunctive relief to enforce a covenant to which it may not be a party. In both cases, absent this Act, those state and municipal agencies might not have standing to enforce a covenant, and might simply be relegated to seeking standing under other law.

Similarly, the mandated 'holder' has a statutory right to enforce the covenant under this section, since the holder must be a party to the covenant. Over time, the holder may come to play a significant role in the monitoring and enforcement process.

On the other hand, the Act does not provide any authority for a citizens' suit to enforce a covenant, although other law may authorize such suits. This Act does not affect that other law.

3. The Act does not authorize any claims for damages, restitution, court costs, attorneys fees or other such awards. Standing to bring such claims, and the bases for any such cause of action, must be found, if at all, under other law. At the same time, while this action does not authorize any such cause of action, it does not bar them if available under other law.

4. Subsection (b) recognizes that in many situations the statutes authorizing an environmental response project will provide substantial authority for governmental enforcement of an environmental covenant in addition to rights specified in the environmental covenant.

[SECTION 12. REGISTRY; SUBSTITUTE NOTICE.

(a) The [insert name of state regulatory agency for environmental protection, secretary of state, or other appropriate state officer or agency] shall [establish and maintain a] [maintain its currently existing] registry that contains all environmental covenants and any amendment or termination of those covenants. The registry may also contain any other information concerning environmental covenants and the real property subject to them which the [state regulatory agency for environmental protection, secretary of state, or other appropriate state officer or agency] considers appropriate. The registry is a public record for purposes of [insert reference to State Freedom of Information Act].

(b) After an environmental covenant or an amendment or termination of a covenant is filed in the registry [established][maintained] pursuant to subsection (a), a notice of the covenant, amendment, or termination that complies with this section may be recorded in the land records in lieu of recording the entire covenant. Any such notice must contain:

(1) a legally sufficient description and any available street address of the real property subject to the covenant;

(2) the name and address of the owner of the fee simple interest in the real property, the agency, and the holder if other than the agency;

(3) a statement that the covenant, amendment, or termination is

available in a registry at the [insert name and address of state regulatory agency for environmental protection, secretary of state, or other appropriate state officer or agency], which discloses the method of any electronic access; and

(4) a statement that the notice is notification of an environmental covenant executed pursuant to [insert statutory reference to this [act]].

(c) A statement in substantially the following form, executed with the same formalities as a deed in this state, satisfies the requirements of subsection (b):

"1. This notice is filed in the land records of the [political subdivision] of [insert name of jurisdiction in which the real property is located] pursuant to, [insert statutory reference to Section 12 of the Uniform Environmental Covenants Act].

2. This notice and the covenant, amendment or termination to which it refers may impose significant obligations with respect to the property described below.

3. A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is [insert address of property] [not available].

4. The name and address of the owner of the fee simple interest in the real property on the date of this notice is [insert name of current owner of the property and the owner's current address as shown on the tax records

of the jurisdiction in which the property is located].

5. The environmental covenant, amendment or termination was signed by [insert name and address of the agency].

6. The environmental covenant, amendment, or termination was filed in the registry on [insert date of filing].

7. The full text of the covenant, amendment, or termination and any other information required by the agency is on file and available for inspection and copying in the registry maintained for that purpose by the [insert name of state regulatory agency for environmental protection] at [insert address and room of building in which the registry is maintained]. [The covenant, amendment or termination may be found electronically at [insert web address for covenant]."]

Comment

1. This section should be used only by states that require creation of a registry of environmental covenants pursuant to this optional Section. At the time this Act was promulgated, Section 101 of CERCLA had recently been amended to encourage states to create registries of sites where remediation work had been completed; *see* Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 § 128(b)(1)(C) (2002). The Act anticipates that in those states that choose to create such a registry for federal law purposes, this section would prove useful in integrating local land recording systems with a single, state-wide registry.

2. The notice specified in this Section may be recorded in the land records in lieu of recording the environmental covenant. However, such a notice should be authorized only if the registry is established and the environmental covenant is recorded there. Where there is no separate registry, the environmental covenant must be recorded in the land records and this notice would not be used.

3. A description of the property under subsection (b)(1) may include identification by latitude/ longitude coordinates. Note also that a description of the location of the contamination itself on the site may require considerably more detail than the description of the real property subject to the covenant; *see* the discussion of this subject in the comments to Section 4.

4. The web address required to be contained in the notice by subsection (c)(7) should reflect the most direct means of identifying the full covenant and accompanying information. As appropriate, the address may require a specific internet address, page or name reference, document number of other unique identifying name, number or symbol.

A registry created under this optional section could be self-funding, in the same way that the corporate records departments of most Secretaries of State offices and the land recording offices of most counties and municipalities are self-funding.]

SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

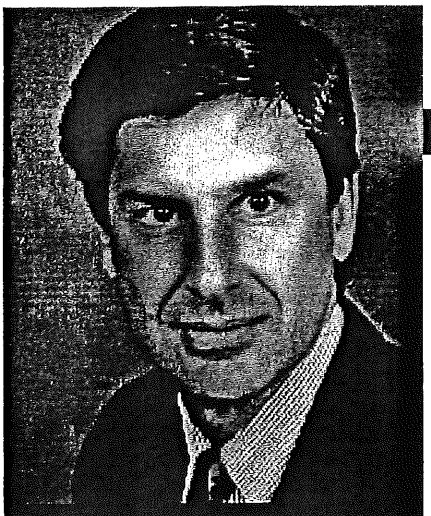
SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This [act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101 of that Act (15 U.S.C. Section 7001(a)) or authorize electronic delivery of any of the tices described in Section 103 of that Act (15 U.S.C. Section 7003(b)).

SECTION 15. SEVERABILITY.

If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org



By John Pendergrass

Ohio Act Ensures Sites' Limited Use

Ohio has become the first state to adopt the Uniform Environmental Covenants Act — a move that several other will likely follow. Both houses of the South Dakota legislature have passed the measure, and it has been introduced in nine other states. UECA is designed to protect human health from risks associated with a contaminated site where cleanup has not restored it to a condition suitable for unrestricted use. The law allows for long-term enforcement of restrictions on use of, or activities at, such a site through a voluntary agreement that will be binding on the current and future owners and tenants of the property.

The act removes legal impediments to the long-term effectiveness of one of the most common forms of institutional controls: restrictions imposed through the operation of property law. Sometimes known as activity and use restrictions, deed restrictions, or environmental use restrictions — but defined as an environmental covenant by the act — this form of land use control is vulnerable to rules of property law that can extinguish it or render it unenforceable after a period of years or under certain circumstances (See my March/April 2000 and November/December 2002 columns). By eliminating or modifying most of those legal rules, UECA will help ensure that property law-based land use controls needed in connection with an environmental cleanup will be reliable and enforceable for as long as they are needed to protect people living, working, or recreating on these sites. The act does not change cleanup standards or otherwise alter the environmental laws that regulate cleanup. Thus, UECA does not change the circumstances under which institutional controls are allowed or used, but helps ensure that they will work as intended for as long as needed. ELI, and this writer, has long advocated this type of reform as essential to ensuring that property law-based institutional controls are effective.

UECA came about through a multi-year process of the National Conference of Commissioners on Uniform State Laws, an organization formed in 1892 to provide states with non-partisan, well-drafted legislation to provide clarity and stability to critical areas of the law. NCCUSL supports federalism with laws that are consistent from state to state. The UECA drafting committee, comprising uniform law commissioners from many states, invited a wide ranging group of advisers to assist it in considering the issues and drafting the uniform law. This columnist participated, along with a deputy attorney general of Colorado, attorneys from the federal government, large corporations, developers, the real estate industry, local governments, banks, academia, and the American Bar Association.

Among the key aspects of the uniform act is that it requires approval by a state or federal environmental regulatory agency of the cleanup plan that results in the use of an environmental covenant. It also requires that other parties with an interest in the land, local governments, and other appropriate parties be given notice of the environmental covenant. The act does not force a property owner to agree to place restrictions on her or his property, nor does it affect any liability rules that may apply to the owner. Subsequent owners would be subject to the restrictions in the environmental covenant, but they would have actual knowledge of the restrictions because the environmental covenant would be recorded in the land records. In order to be valid an environmental covenant must meet certain standard requirements of property law, such as being written and signed by the parties.

The act allows an expanded group of interested parties to enforce the restrictions contained in an environmental covenant. This group includes regulatory agencies, which under traditional property law were not authorized to enforce a restriction imposed in a deed, and third party holders of the covenant, who could include non-governmental organizations. Most significantly, the act precludes a valid environmental covenant from being inadvertently extinguished by various common law property doctrines, adverse possession, tax lien foreclosures, less-restrictive zoning changes, and marketable title statutes.

The last feature is critical because state laws governing institutional controls do not fully insulate environmental restrictions in deeds from all of these rules. It ought to make property owners, state regulators, and environmentalists more confident that if and when institutional controls are used, they will meet their purpose. The increased certainty of the controls will protect the original property owner from the possibility that her or his liability will be revived, while regulators, neighbors, and environmentalists should appreciate the reduced risk of exposure to the residual hazardous substances. More effective controls also serve the interests of lenders and local governments by facilitating the redevelopment, sale, and productive use of property that might otherwise lie unused.

Finally, the notice requirements will improve the information that prospective purchasers, local governments, developers, and lessees actually receive about restrictions and the underlying environmental conditions on property. And authorizing regulators and others to enforce covenants themselves serves the interests of all concerned parties.

These features demonstrate that UECA meets the goals of its parent, NCCUSL, of being well-drafted to solve a real problem in a non-partisan manner without otherwise affecting related policy choices. In Ohio and South Dakota UECA received widespread support and was not controversial, which ought to be the case in every state. Having spent more than a decade researching and writing about the effectiveness of institutional controls, this writer considers UECA to be essential to their long-term effectiveness.

John Pendergrass is Director of ELI's Center for State, Local, and Regional Environmental Programs. He can be reached at pendergrass@eli.org.

Lincoln Journal Star
Monday, March 7, 2005

Bill would create land 'covenants'

UECA Adopted in Nebraska on March 23, 2005

Under the system, landowners and the DEQ would form agreements about limits on and cleanup of contaminated land.

LEGISLATURE 2005

BY NANCY HICKS
Lincoln Journal Star

In an ideal world, hundreds of polluted sites across the state — gas stations with leaky underground tanks, old dry cleaners or manufacturers that used solvents or stored hazardous wastes — would be completely cleaned up.

But there isn't enough money to clean up everything.

So the Nebraska Legislature is opting for a practical solution through what are called "environmental covenants" in a bill that adopts a national model.

Under the new system, a landowner and the Nebraska Department of Environmental Quality (DEQ) would come to an agreement about what cleanup should be done and what restrictions there should be on future use of the land.

An environmental covenant, spelling out the agreement, would be recorded with the county register of deeds, available to warn prospective buyers of the limitations on the land, according to Lincoln Sen. Chris Beutler.

A former gas station site, where leaking fuel has contaminated soil or ground water, may be an appropriate place for a parking lot but maybe not an appropriate place to build a home, said Sen. Ed Schrock of Elm Creek.

The measure is in part recognition of failure, the failure of the culture to clean up all polluted sites, Beutler said. So it is a disappointment.

But the proposal also would allow landowners to put "brown fields" back to use, and the covenant would identify those places "where, in a sense, we have to be careful where we step," he said.

The state has an estimated 2,200 brown fields — property that may have pollution problems that could complicate development, according to Ted Huscher, voluntary cleanup coordinator for DEQ.

The proposal acknowledges there are limited resources and some degradation may never be completely repaired, said Lincoln Sen. David Landis, sponsor of the plan. The bill allows DEQ to require remediation. Then all parties agree that the future uses will be limited, he said.

The environmental covenant makes the land more marketable because future owners know the situation. Right now such land often can't be sold because potential buyers don't know what kind of cleanup might be required.

"There are no buyers. No one

See COVENANTS, Page 2A

Covenants

Continued from Page 1A

wants anything to do with the property," Landis said.

Using a purely hypothetical example, Landis said DEQ might require a landowner to remove the top 10 feet of soil and fill in with sand. The environmental covenant might allow the land to be used for storage buildings but not for homes.

The proposal has an unusual partnership, with the Sierra Club Nebraska joining the state's bankers, the bar association and BNSF Railroad in support of environmental covenants.

In general, the Sierra Club would like everything cleaned up to the highest level possible, said Ken Winston, who lobbies for the environmental group. But if environmentalists demand that and nothing happens, then land stays in a contaminated state.

In some situations, it is better to have some remediation and a covenant restricting its use, rather than to expect the impossible, he said.

The proposal is offered as a national solution, with language developed by the National Conference of Commissioners on Uniform State Laws. Nebraska could become the second state in the nation to create the environmental covenant system. The proposal (LB8) was attached as an amendment to another bill (LB298) last Monday, and the package received strong first-round approval.

Ohio has adopted environmental covenant legislation, and similar bills have been introduced in at least 15 states, said Larry Ruth, a member of the commission, which offers model legislation on issues that affect all states.

DEQ currently can work out agreements for cleanup and some restricted use of land, but the environmental covenant measure would provide consistency across states and offer some greater protection, allowing any party to the covenant to enforce the restrictions.

"That is important on redevelopment of sites, particularly where the financing interests, the banks, want to be sure that their interests are protected," said Jay Ringenberg, DEQ deputy director.

"On the surface, the national uniformity doesn't seem to be important. But many projects are big, and their financing comes from out of state. Having uniform covenants across the country provides a comfort level for the financing people," said Ringenberg.

Reach Nancy Hicks at 473-7250 or nhicks@journalstar.com.

Haymarket example

When Haymarket Park was built, some of the land now used for parking had been contaminated.

Some cleanup was done, but some contamination remained, so a notice of the contamination is a part of the deed for the property.

A bill before the Legislature would allow environmental covenants and subsequent redevelopment of so-called "brown fields."

To Mike Kerr : From Kelly Novak Fax 312.915.0187

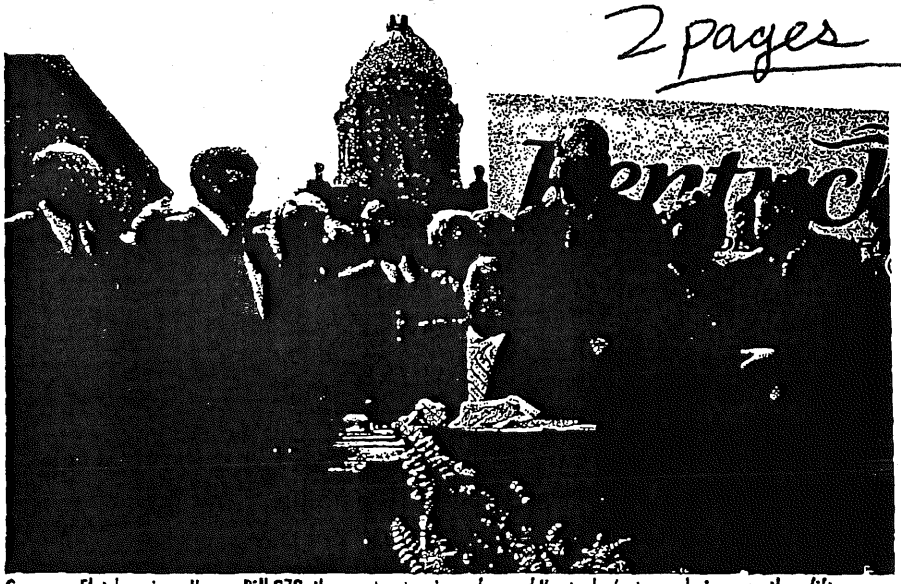
Kentucky's Brownfield Program Enhanced

2 pages

By Herb Petitjean

Kentucky's brownfield program, though fairly new, has already had a number of successes — including three projects that have won prestigious Phoenix Awards. Action by the 2005 Kentucky General Assembly promises to bring even greater achievements.

Kentucky is blessed with an abundance of greenfields. But this blessing has been a curse for brownfield redevelopment. With an absence of incentives, it was much easier for a developer to build on farmland rather than tackle a brownfield.



Governor Fletcher signs House Bill 272, the most extensive reform of Kentucky's tax code in more than fifty years.

Tax Incentives

Tax reform legislation enacted this year establishes the first state incentives for brownfield redevelopment in Kentucky. It is hoped that this will level the playing field between brownfields and greenfields and reduce the estimated 130 acres of farmland lost per day in the commonwealth.

A goal in designing the incentives was to ensure that "the polluter pays." A property is not eligible for incentives if there is a responsible party financially able to conduct the cleanup.

Also, the recipient of incentives must be a "bona fide prospective purchaser." This requirement ensures that the redeveloper has no affiliation with the responsible party, is purchasing the property with full awareness of contamination likely to be encountered and is committed to acting in a responsible manner.

Recipients of the brownfield incentives must pass through Kentucky's Voluntary Environmental Remediation Program (VERP). In this program, an applicant and the Environmental and Public Protection Cabinet enter into an Agreed Order. Upon satisfaction of the provisions of the order, the cabinet issues a "covenant not to sue."

For three years following the issuance of the covenant, the property will not be subject to local ad valorem property taxes and will have its state ad valorem property tax reduced from 31.5 cents per $100 of assessed value to 1.5 cents per $100 of assessed value.

In addition, qualified parties will receive up to $150,000 in tax credits for expenditures made in order to meet the requirements of the VERP Agreed Order. The allowable credit for any taxable year is a maximum of 25 percent of the credit authorized. The credit may be carried forward for 10 successive taxable years.

Other Changes

The 2005 legislative session also brought other changes related to contaminated properties. The state Superfund law was amended to provide liability protection for bona fide prospective purchasers and for owners of properties contaminated by releases on adjacent properties. This updates Kentucky law to make it closer to federal law, as amended by the Small Business Liability Relief and Brownfield Revitalization Act.

The legislature also enacted the Uniform Environmental Covenant Act (UECA), making Kentucky the third state to do so. The National Conference of Commissioners on Uniform State Laws developed the UECA.

In general, U.S. property law has not provided a good mechanism for ensuring protective measures remain in place at properties where contamination is being managed on-site rather than removed.

The environmental covenants created by the UECA are more enforceable and easier to maintain over time than existing institutional control mechanisms.

This greater assurance benefits nearly all of the parties involved — state environmental regulators, property owners, local governments, environmental groups, developers, lenders and title insurance companies. **BFN**

Herb Petitjean is brownfields coordinator for the Commonwealth of Kentucky.

South Dakota Enacts UECA

UECA, a new state statute that enforces restrictions on the use of remediated brownfields, is now the law in South Dakota. The Uniform Environmental Covenants Act (SB 143) was signed into law by South Dakota Governor Mike Rounds on March 9, 2005.

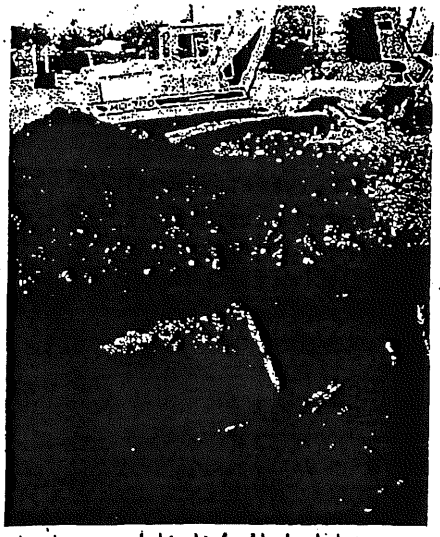
UECA was also recently passed in Ohio, Kentucky and Nebraska and has been introduced in several additional state legislatures so far this year.

UECA, drafted and approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL), establishes requirements for a new valid real estate document — an "environmental covenant" — to control the future use of brownfields when real estate is transferred from one person to another.

"UECA provides a clear mechanism for the states to create, enforce, modify and terminate environmental covenants to control the use of contaminated real estate and permit safe reuse of that property," said Michael Kerr, deputy legislative director of NCCUSL.

"The act makes it possible for owners to transfer property knowing that the restrictions that need to be kept on that property will be respected." **BFN**

Washington Cleanup List Updated



Oil and water pooled in this freshly dug hole in Edmonds, Wash., was removed by a vactor truck.

Eight cleaned-up sites have been removed and 18 newly assessed sites added to Washington state's hazardous sites list.

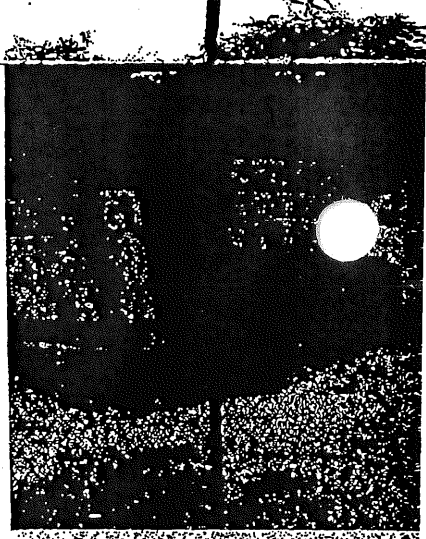
Over the past 15 years, some 9,500 toxic sites have been identified. Nearly 60 percent of those sites have been cleaned up or require no further action, and 31 percent are actively being cleaned up or monitored. Nearly 1,000 toxic sites are still awaiting action.

"Early on, we made it a priority to deal with sites that posed the highest safety risk to our citizens, and now we're starting to face sites that are more technologically challenging," said Jim Pendowski, the lead toxic cleanup manager for Ecology.

Cleanup is required at sites where the amount of toxic substances is above limits set in the state's Model Toxics Control Act (MTCA), a 1989 citizen initiative that established a broad-based program for cleaning and preventing toxic contamination.

The properties on Ecology's ranked list of hazardous sites are graded on a scale of one to five, with a rank of one representing the highest level of concern. The scores do not necessarily reflect the severity of the contamination, but are based on a site's location and the potential paths through which humans and sensitive environments could be exposed to the hazardous substances. Thus, a site with a number one ranking may have less contamination or less-hazardous contaminants than lower-ranked sites, but the risk of exposure is higher and cleanup needs to happen more quickly.

MTCA specifies that those responsible for polluting a site must pay for its cleanup. The state pays for cleanup only when a liable person cannot be found or when identified liable parties lack the financial resources to pay for the work. **BFN**



Numerous warning signs are posted on the fence former Oahu Sugar Company's pesticide mixing

Hawaii Cleanup Investigation Ordered

The U.S. EPA has ordered Oahu S Company, LLC to further investigate address dioxin contamin[illegible] at it mer pesticide mixing [illegible] on Waipio Peninsula near Wai[illegible] Oahu.

High levels of dioxins had bee covered in 2002 near Oahu Su former pesticide mixing fa Although a seven-foot-high fence rounds the one-acre area, investig found repaired holes in the fence evidence of bicycle tire tracks insi fence during a site visit in Sept 2003.

There is also the possibility, c taminated sediment going into W Bay from surface runoff and drainage ditch.

Oahu Sugar will need to dete the full extent of contamination, may extend outside the site's fenc prevent exposure to contaminants soils until a final clean[illegible] rem implemented.

Oahu Sugar leased the 3.5 ac from the U.S. Navy in the 194 closed its operation in the 1990s

The site was used to mix pes and fertilizer solutions for appl into the surrounding sugar cane The area is part of the Pearl Naval Complex Superfund Site.

NATIONAL ICs COALITION

February 24, 2005

NCCUSL
211 E. Ontario Street, Suite 1300
Chicago, IL 60611

Re: Support of UECA

Dear NCCUSL legislative liaisons,

We are writing on behalf of the National ICs Coalition (NICC), a diverse group of technical, legal and business professionals representing industry, government and non-profit organizations. The goal of the Coalition is to promote a better understanding and more effective use of institutional controls (ICs). We fully support and encourage the adoption of the Uniform Environmental Covenants Act (UECA) by the states in order to facilitate the implementation and enforcement of ICs, and therefore, successful land renewal and redevelopment.

Current members of the National ICs Coalition include the following organizations and their members: International City/County Management Association (ICMA), American Chemistry Council (ACC), American Petroleum Institute (API), Holland and Knight LLP, National Governors Association (NGA), National Brownfields Association (NBA), the Environmental Bankers Association (EBA), the Environmental Law Institute (ELI), Center for Public Environmental Oversight (CPeO), and Energy Communities Alliance (ECA), along with consultants from DPRA, Delta Environmental, and Terradex.

Please feel free to contact us if you have any questions - David Borak at ICMA (202/962-3506, dborak@icma.org) or Lorraine Krupa-Gershman at ACC (703/741-5219, Lorraine_Gershman@americanchemistry.com).

Sincerely,

David Borak

Lorraine Krupa-Gershman

David Borak
ICMA

Lorraine Krupa-Gershman
ACC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 26 2004

Mr. K. King Burnett
President
National Conference of Commissioners
on Uniform State Laws
221 E. Ontario Street, Suite 1300
Chicago, IL 60611

Dear Mr. Burnett:

We would like to commend the National Conference of Commissioners on Uniform State Laws (NCCUSL) for its recent passage of the Uniform Environmental Covenants Act (UECA). We recognize the hard work of the UECA drafting committee which solicited input from various levels of government, the private sector, the environmental community, and academia in the development of this Act.

As you know, EPA works with Federal, State, Tribal and local regulators across the country to complete environmental cleanups under several environmental statutes. Many of these cleanups rely on institutional controls to protect human health and the environment over the long term. Currently, parties must rely on a patchwork of laws to implement the land use controls needed to help minimize the potential for exposure to residual contamination and protect the integrity of the remedy. While some states have enacted legislation designed to make these controls more effective, many have not. The wide variation in local and State authority often makes implementation of controls difficult and time-consuming. More reliable and uniform institutional controls will also mean more properties have the potential to go from cleanup to redevelopment. Effective uniform institutional controls should make it easier for buyers and developers to obtain the necessary financing. Returning these properties to productive use will greatly benefit the environment and surrounding communities. For these reasons, we are supportive of the goals of the UECA in seeking to promote greater uniformity in this area.

Again, we commend NCCUSL for developing the UECA and making an important contribution toward assuring the long-term protectiveness of cleanups.

We will continue to follow your progress as you present the UECA to the American Bar Association and the States for their endorsement.

Sincerely yours,

Marianne Lamont Horinko
Assistant Administrator
Office of Solid Waste and Emergency Response

Phyllis P. Harris
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance

cc: Barry Breen, OSWER
Mike Cook, OSRTI
James Woolford, FFRRO
Robert Springer, OSW
Cliff Rothenstein, OUST
Linda Garczynski, OBCR
Susan Bromm, OSRE
Ramona Trovata, OSWER
John Michaud, OECA

NATIONAL CONFERENCE OF
COMMISSIONERS ON UNIFORM STATE LAWS

MICHAEL R. KERR
Deputy Executive Director; Deputy Legislative Director

211 E. Ontario St.
Suite 1300
Chicago, IL 60611

Ph: (312) 915-0195
Fx: (312) 915-0187
mkerr@nccusl.org

The Uniform Environmental Covenants Act

What Does It Mean For Me?

Synopsis: Uniform Environmental Covenant Act (UECA)

- Promotes protective, "risk-based" clean-up of environmental contamination
- Provides local communities a strong voice in long-term land stewardship
- Clarifies or removes confusing real-estate legal issues
- Provides for enforcement of environmental land use covenants
- Promotes "brownfields" development and economic growth
- Supported by the National Conference of Commissioners on Uniform State Laws (NCCUSL)

Brownfields Redevelopment: A Uniform Approach

The redevelopment of brownfields across the nation has been successful in large part because regulators, property owners and communities have generally accepted that contamination can be left in place under certain circumstances to allow redevelopment without presenting any significant risk to human health or the environment.

For brownfields redevelopment to continue, there is a need for better legal tools to ensure that future generations understand the reasons why land uses may have been limited to specific purposes and why certain long-term monitoring and maintenance obligations may be needed. In addition, regulators, responsible parties and the community need to have confidence that these environmental land use restrictions will be enforced over time. Now the few tools that we have cannot be relied on to achieve these goals.

There is a solution. A national authority—the National Conference of Commissioners on Uniform State Laws (NCCUSL)—has created a uniform law that provides a better framework for implementing and enforcing future environmental land use restrictions. This framework, called an environmental covenant, is a legal device to restrict activities and impose affirmative obligations on sites where contamination remains in place. Similar environmental land use restrictions are sometimes called institutional controls, land use controls, environmental easements, proprietary controls, or activity and use limitations. These restrictions are necessary to protect human health and the environment from the potential of inadvertent exposures to residual contamination while encouraging economic redevelopment.

NCCUSL is a body of legal professionals that represent all 50 states. Since its organization, the Conference has drafted more than 200 uniform laws on numerous subjects and in various fields of law, including the Uniform Commercial Code (UCC). In drafting uniform laws like the UECA, NCCUSL considers feedback from federal and state regulators, parties legally responsible for environmental clean-up, property owners, real estate and environmental lawyers, title companies, potential property buyers, banks, environmental groups, and municipalities. In August 2003, the UECA was adopted by a majority of state representatives to be used by state legislatures as a guideline for uniformity in environmental covenant law.

Why Do We Need States to Adopt the Uniform Environmental Covenants Act?

Very few states have enacted laws that allow them to impose durable environmental land use restrictions on remediated land. Where there are no state laws, parties are forced to rely on what is known as "common law," in which environmental land use restrictions are subject to specific, but often confusing, legal requirements stemming from hundreds of years of property case law. Under common law, environmental agencies typically may not become involved in creating or enforcing an environmental covenant as they have no legal interest in the property itself or in an adjoining property. This makes it difficult to promote economic development and protect the community because the environmental agency has no way to ensure that the restrictions will remain in place and be enforced as long as they are needed.

Photos of brownfields are courtesy of the National Brownfields Association

Even in those states where legal authority exists, the laws are frequently limited to a specific area or type (e.g., underground storage tanks) and do not anticipate other issues that may arise. For example, take a former industrial property that has been remediated through a voluntary cleanup action. The regulatory agency has determined that the residual contamination will not be harmful to humans if the site is used only for industrial use. Under common law, it is quite likely that the "industrial use only" restrictions would be removed by the condemnation action.

What Would the Uniform Environmental Covenants Act Do?

Adding the UECA would strengthen practices in an area that involves elements of both real estate and environmental law. The uniform law establishes a process for creating, modifying and enforcing environmental covenants and, thus it eliminates some of the common law barriers which have prevented land use restrictions from enduring over time.

The environmental covenants created under UECA would be based upon traditional property law principles and would be recorded in the local land records and thereby bind successive owners of the property. State and local governments would have clear rights to enforce the land use restrictions and thereby ensure with greater certainty the protection of human health and the environment throughout the life of the land use restriction and through real estate transactions or legal actions.

What Will the Uniform Law Mean for Communities?

UECA provides a viable structure for creating and maintaining environmental land use restrictions for as long as they may be needed. Having a viable mechanism for creating these legal restrictions will reduce the risk that people will be inadvertently exposed to contamination that has been left in place. With confidence that the restrictions can be properly created and maintained over time, environmental regulators, property owners, local governments, environmental groups, developers, lenders and title companies will be more willing to rely on, and have confidence in, environmental covenants as part of the cleanup. Creating viable state laws to create these restrictions will encourage the reuse of property that might otherwise lie underutilized or abandoned, thereby providing a benefit to all parties involved.

The public would have notice of the existence of the environmental covenant, either through the local land records where the covenant must be recorded, or through a registry to be maintained by the state environmental agency. Thus, the community can become involved in monitoring these environmental covenants over time—sometimes called "long-term stewardship" of the land.

The Act addresses a number of circumstances where the restrictions might otherwise be accidentally eliminated, including

- Foreclosure and bankruptcy
- Eminent domain
- Adverse possession
- Marketable Title Act

The Act also addresses important legal issues, such as:

- Third party enforcement
- Notice
- Recording and tracking

Can UECA Be Used Now?

The benefits of UECA would not automatically apply to land use restrictions adopted under either current state laws or common law. The passage of the uniform law would similarly not invalidate any of those existing land use restrictions. However, adoption of the uniform law in any given state would give that state CLEAR AUTHORITY to implement, monitor, modify and enforce environmental covenants. It would also give third parties the right to monitor and enforce these controls. Given the importance of these controls to the success of the brownfields redevelopment movement, it is critically important to fill this gap in current state law.

For More Information

For information on the UECA and how to encourage its adoption in your state, visit

http://www.environmentalcovenants.org/ueca/

or

http://www.lucs.org/ueca.

This fact sheet was developed by the National ICs Coalition under a grant from the American Petroleum Institute. The Coalition is a diverse group of technical, legal and business professionals representing industry, government and non-profit organizations with a goal to promote a better understanding and more effective use of institutional controls (ICs).

The cross-functional composition of the Coalition's membership gives it a unique perspective on the issues of ICs, environmental protection, and economic development. If you would like more information on the Coalition, please contact David Borak at the International City/County Management Association (ICMA) (202/962-3506, dborak@icma.org) or Lorraine Krupa-Gershman at the American Chemistry Council (ACC) (703/741-5219, Lorraine_Gershman@americanchemistry.com).

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UECAnews

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What's New?

One More Enactment; One More Endorsement

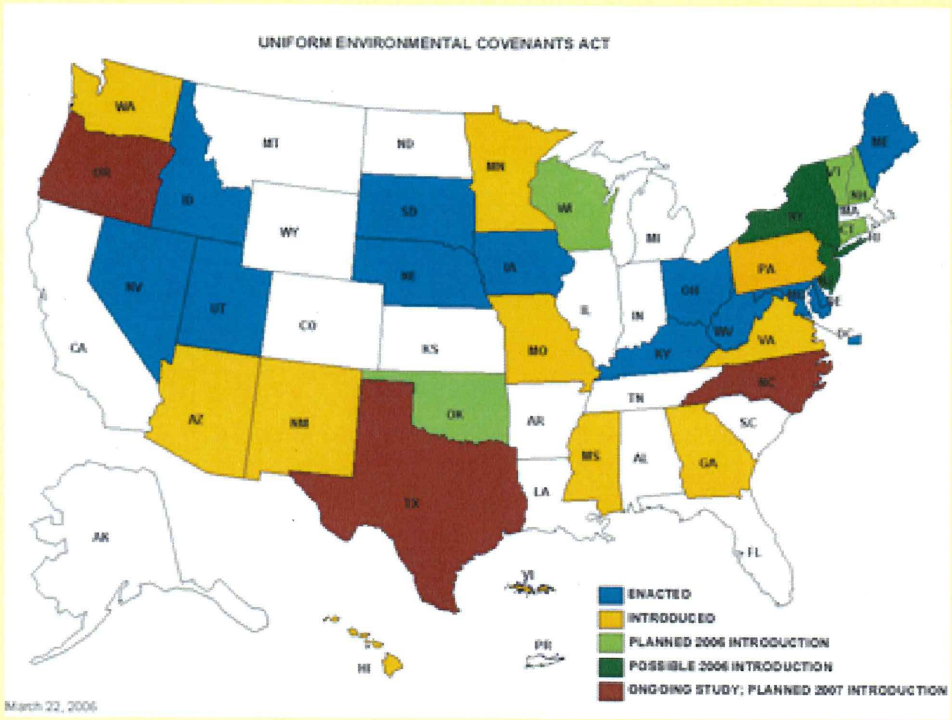
Utah recently became the 13th state to enact the Uniform Environmental Covenants Act. SB153 was signed into law by Utah Governor Jon Huntsman, Jr., on March 15. Utah joins Delaware, DC, Idaho, Iowa, Kentucky, Maine, Maryland, Nebraska, Nevada, Ohio, South Dakota and West Virginia in adopting UECA.

UECA has also been introduced in 11 other states to date: Arizona, Georgia, Hawaii, Minnesota, Mississippi, Missouri, New Mexico, Pennsylvania, U.S. Virgin Islands, Virginia and Washington. See information at right for details.

Also, UECA was just endorsed by the Environmental Council of the States (ECOS) at its 2006 Spring Meeting in Charleston, SC, this week.

What is UECA?

The Uniform Environmental Covenants Act – UECA – is a uniform law that was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2003. UECA establishes requirements for a new valid real estate document – an "environmental covenant" – to control the future use of brownfields when real estate is transferred from one person to another. [Read More]



The Facts...

ARIZONA
SB 1372 – Sen. Allen – In Senate Rules Committee

DISTRICT OF COLUMBIA
B16-0147 – Councilmember Mendelson - ENACTED

GEORGIA
HB 1353 – Rep. Forster – In House Judiciary Committee

HAWAII
HB 1706 – Rep. Morita – Passed House
SB 2345 - Sen. Bunda - Passed Senate

IDAHO
SB 1255 – ENACTED

MINNESOTA
HF 1154 - Rep. Emmer - In House Civil Law Committee
SF 1426 - Sen. Hottinger - In Senate Judiciary Committee

MISSISSIPPI
HB 1427 - Rep. Blackmon - Held for Study
SB 2864 – Sen. Doxey – Held for Study

INFORMATION KIT

To order a free information kit on UECA, click here

PRESS RELEASE

To view the latest press release on UECA, click here

Key Points About UECA

UECA will help ensure that land use controls needed in connection with an environmental cleanup will be reliable and enforceable for as long as they are needed to protect people living and working on or near these sites. [Read More]

MISSOURI
SB 862 - Sen. Engler - Passed Senate Agriculture Committee

NEW MEXICO
HB 314 – Rep. Heaton – Passed House, Died on Adjournment in Senate

PENNSYLVANIA
HB 1249 – Rep. Rubley - In House Environmental Resources Committee

U.S. VIRGIN ISLANDS
26-0064 – Sen. Barshinger – In Senate

UTAH
SB 153 – Sen. Hillyard – ENACTED

VIRGINIA
HB 814 – Rep. May – Carried over to 2007

WASHINGTON
SB 6517 – Sen. Fraser – In Senate Environment Committee

For Further Information...

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Websites
www.nccusl.org
www.environmentalcovenants.org
www.lucs.org/ueca

What is the National Conference of Commissioners on Uniform State Laws?

The National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 114th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.

The organization comprises more than 300 lawyers, judges and law professors, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. Uniform Law Commissioners must be lawyers, qualified to practice law. Since its inception in 1892, the group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.

Uniform Environmental Covenants Act

Background:

The Uniform Environmental Covenants Act (UECA), allows for the long-term enforcement of clean-up controls (restrictions on certain uses, prohibitions on using wells, protection of concrete "caps", maintenance of monitoring equipment, etc.) to be contained in a statutorily-defined, voluntary agreement known as an "environmental covenant" which will be binding on subsequent purchasers and tenants of the property and be listed in the local land records.

The act will remove various legal impediments to the use of such controls and thereby lessen liability concerns of sellers and lenders associated with the redevelopment and sale of "brownfields" sites. Federal or state regulatory approval of the underlying cleanup plan will still be required, as will notice to appropriate parties, including local governments and other parties in interest. UECA helps fulfill the dual purposes of activity and use restrictions – the protection of human health and the economically viable reuse of the property in question, while also providing the legal infrastructure for needed for creating, modifying, and recording environmental covenants.

Key points about the Uniform Environmental Covenants Act:

- UECA will help ensure that land use controls needed in connection with an environmental cleanup will be reliable and enforceable for as long as they are needed to protect people living and working on or near these sites.
    - **Property owners** should want the option of environmental covenants because reliable long term controls reduce the risk that a future owner might (accidentally or deliberately) eliminate the controls and thereby increase or revive the first owner's environmental liability.
    - **Lenders and local governments** should want the option of environmental covenants because these tools will allow for the redevelopment, sale, and productive use of remediated property (thereby increasing the underlying value of the real estate).
    - **Environmental regulators and environmentalists** should want the option of environmental covenants because they provide a mechanism for the long-term stewardship of remediated properties and help ensure that agreed-upon use restrictions remain in place as long as needed to protect human health and surrounding property.
    - **Neighbors and potential purchasers** should want the option of environmental covenants because they are given clear notice of what activities and uses are appropriate for the property and what sorts of controls need to be maintained in the future.
- UECA helps to return previously contaminated property to the stream of commerce, by allowing the owners of that property to engage in responsible risk-based cleanups and then transfer or sell the property subject to approved controls on its use.
- UECA does NOT say what clean-up standards need to be met or whether liability for a cleanup should be shifted or capped. These standards are determined by other applicable state or federal law.

- UECA does NOT force any existing property owner to agree to long-term use controls on his or her property – these agreements are VOLUNTARY. A subsequent purchaser of a property would buy subject to these controls, but would do so with actual knowledge of the restrictions as recorded in the land records.

- UECA gives a broad array of interested parties the ability to enforce the use and activity restrictions contained in an environmental covenant, thereby helping to ensure those controls will remain in place and prevent unintended harm.

- UECA requires a state or federal environmental agency to be a signatory to the covenant, thereby ensuring that risk assessments and control mechanisms are based on sound science, will adequately protect human health and surrounding properties, and that notice of the covenant is provided to affected third parties.

- UECA protects valid environmental covenants from being inadvertently extinguished by application of various common law doctrines, adverse possession, tax lien foreclosures, less-restrictive zoning changes, and marketable title statutes.

The Uniform Environmental Covenants Act is an important tool in revitalizing inner cities and other areas where vacant and underused properties are preventing vital redevelopment or other productive use of the land. It was drafted with the participation of state and federal regulators, public and private land owners, banking interests, environmentalists, and land use experts. Its uniform national enactment will provide the owners of contaminated land with greater confidence to invest in long-term remediation strategies and use controls, while at the same time protecting human health and allowing those properties to be developed and thus bring economic revitalization to blighted areas and sites.

Latest Update

In its first year of active legislative consideration (2005), UECA was adopted in 10 states. So far in 2006, UECA has been adopted in three jurisdictions (Utah, Idaho, and D.C.) and UECA bills have been introduced in 11 other state and territorial legislatures so far. For the latest information on UECA, please see the newsletter on the UECA website, www.environmentalcovenants.org.

Support for UECA

UECA has been approved by the **American Bar Association**, and the **Environmental Council of the States** recently adopted a resolution urging states to adopt UECA or similar legislation. UECA is included as "Suggested State Legislation" by the **Council of State Governments**, and the **American Legislative Exchange Council** has approved UECA as a model bill. The legislation has also been endorsed by the **National Institutional Controls Coalition** (NICC). NICC is a broad coalition of affected interests, including representatives of affected industries, federal and state regulators, environmental groups, cleanup specialists, and local, state and federal governmental organizations. Current members of the NICC include the following organizations and their members: International City/County Management Association, American Petroleum Institute, Holland and Knight LLP, U.S. Navy, National Governors Association, the National Brownfields Association, the Environmental Bankers Association, the Environmental Law Institute, and Energy Communities Alliance. The NICC maintains a website devoted to UECA at http://www.lucs.org/ueca. This website contains information not just on UECA, but the NICC member organizations as well.

A UECA Task Force has been formed, comprised of the commissioners who worked on the drafting committee, as well as a number of the advisors, observers, and environmental law experts who participated in the drafting effort. The task force maintains a website devoted to UECA, www.environmentalcovenants.org, which contains useful information on the act.

About NCCUSL

The National Conference of Commissioners on Uniform State Laws (NCCUSL), now 113 years old, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state. While NCCUSL is best known as the drafters of the Uniform Commercial Code (UCC), in recent years it has also promulgated widely-adopted uniform acts on the interstate recognition and enforcement of family law determinations (child support, custody, parentage, and protection orders), uniform acts on arbitration and mediation, revisions to the principal business organizations statutes of the United States (partnerships, limited partnerships, limited liability companies, etc.), acts codifying or recodifying state trust and securities laws, and several acts relating to land use, common interest ownerships, and other real property subjects.

Uniform Law Commissioners must be lawyers, qualified to practice law. They are lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote the enactment of uniform state laws in areas where uniformity is desirable and practicable. NCCUSL is funded by, and works on behalf of, state governments.

About UECA

The Uniform Environmental Covenants Act (UECA), promulgated by NCCUSL in 2003 and approved by the American Bar Association in 2004, resolves a number of significant legal impediments to the use of institutional controls and other land use restrictions in reclaiming sites that might not otherwise be remediated and developed. UECA does not solve every problem, but it does make it possible for owners to transfer property confident that the restrictions that need to be kept on that property will be respected. A broad coalition of stakeholders has formed to support the study and adoption of UECA in every state. If you would like further information about UECA, or if you are interested in setting up a study or informational hearing in your state on the act, please contact NCCUSL at 312-915-0195. Information about NCCUSL is also available at the NCCUSL website (www.nccusl.org) and also at www.environmentalcovenants.org and www.lucs.org/ueca.

If you are a legislator interested in sponsoring, cosponsoring, or supporting the introduction of UECA in your state in 2005, or if you work for or with a state environmental agency or bar committee that is interested in reviewing the act, please contact Michael Kerr (mkerr@nccusl.org) or John McCabe (jmmccabe@nccusl.org) at the NCCUSL National Office at 312-915-0195. Additional materials, and in some cases speakers, may be available. Plans are underway to introduce the act in approximately 20 state legislatures in 2005, and we urge all interested parties to become familiar with the UECA and its provisions in advance of this legislative activity.

WHY STATES SHOULD ADOPT
THE UNIFORM ENVIRONMENTAL COVENANTS ACT

The Uniform Environmental Covenants Act (UECA), drafted and approved by the National Conference of Commissioners on Uniform State Laws in 2003, allows for the long-term enforcement of clean-up controls (restrictions on certain uses, prohibitions on using wells, protection of concrete "caps", maintenance of monitoring equipment, etc.) to be contained in a statutorily-defined agreement known as an "environmental covenant" which will be binding on subsequent purchasers of the property and be listed in the local land records. The fundamental purpose of this act is to remove various legal impediments to the use of such restrictions and to thereby lessen liability concerns of sellers and lenders associated with the redevelopment and sale of "brownfields" while at the same time requiring state approval of the remediation and control plan as well as notice to surrounding landowners, local governments, and other parties in interest.

There are many reasons why every state should adopt the Uniform Environmental Covenants Act.

- UECA helps to return previously contaminated property to the stream of commerce, by allowing the owners of that property to engage in responsible risk-based cleanups and then transfer or sell the property subject to state-approved controls on its use.
- UECA gives a broad array of interested parties the ability to enforce the use and activity restrictions contained in an environmental covenant, thereby helping to ensure those controls will remain in place and prevent secondary harms
- UECA protects valid environmental covenants from being inadvertently extinguished by application of various common law doctrines, adverse possession, tax lien foreclosures, less-restrictive zoning changes, and marketable title statutes.
- UECA requires the state environmental agency to be a signatory to the covenant, thereby ensuring that risk assessments and control mechanisms are based on sound science and that affected third parties have notice of the covenant and associated controls.
- UECA does *not* supplant or impose substantive cleanup standards or liability; rather it validates approved site-specific controls resulting from an environmental response project, and makes sure those controls are maintained as long as necessary to meet the objective for which they were approved.

The Uniform Environmental Covenants Act is an important tool in revitalizing inner cities and other areas where vacant and underused properties are preventing vital redevelopment. It was drafted with the participation of state and federal regulators, public and private land owners, banking interests, environmentalists, and land use experts. Its uniform national enactment will provide the owners of contaminated land the confidence to invest in long-term remediation strategies and use controls, while at the same time allowing those properties to be developed and thus bring economic revitalization to blighted areas and sites.

UNIFORM ENVIRONMENTAL COVENANTS ACT
- A SUMMARY -

Virtually everywhere in America, state and local governments are struggling with the problem of brownfields – vacant, abandoned and underused sites with various forms and degrees of environmental contamination. Reclaiming many of these sites for beneficial uses is very difficult and very expensive. Total cleanup, if possible, would often cost much more than the market value of the property. However, if a legal mechanism can be developed for long term control of use and clean-up or remediation (the current term of art), some properties may be safely returned to use and may be bought and sold. Current real property law is inadequate. Various common-law doctrines and other legal rules often work against such long-term controls, a situation which undermines the use and marketability of contaminated property.

In 2003, the Uniform Law Commissioners have promulgated the Uniform Environmental Covenants Act to overcome the inadequate common law rules. The statutory legal mechanism it creates is called an "environmental covenant." Covenants are generally recognized in the common law as a means of conveying restrictions on use of land. The environmental covenant relies on the common law base, but re-creates it for the specific purpose of controlling the use of contaminated real estate, perpetually if necessary, while allowing that real estate to be conveyed from one person to another subject to those controls.

An environmental covenant is a specific recordable interest in the real estate. It arises from an environmental response project that imposes activity and use limitations. Such a project must arise under an appropriate federal or state program or approval for clean up of the property or closure of a waste management site. No environmental covenant is effective without the relevant agency signature. The instrument recites the controls and remediation requirements imposed upon the property, runs with the land, and cannot be extinguished when one owner transfers rights or interests in the property to another, no matter who has the right to enforce its terms. The covenant is perpetual unless limited in time within the instrument

Two principal policies are served by confirming the validity of environmental covenants. One is to ensure that land use restrictions, mandated environmental monitoring requirements, and a wide range of common engineering controls designed to control the potential environmental risk of residual contamination will be recorded in the land records and effectively enforced over time. This Act reverses the variety of common law doctrines that limit such enforceability.

A second important policy served by this Act is the return of previously contaminated property, often located in urban areas, to the stream of commerce. The environmental and real property legal communities have often been unable to identify a common set of principles applicable to such properties. The frequent result has been that these properties do not attract interested purchasers and therefore remain vacant, blighted and unproductive. This is an undesirable outcome for communities seeking to return once important commercial sites to productive use. Large numbers of contaminated sites are unlikely to be successfully recycled until regulators, owners, responsible parties, affected communities, and prospective purchasers and their lenders become confident that environmental covenants will be properly drafted, implemented, monitored and enforced for so long as needed. This Act should encourage transfer of ownership and property re-use by offering a clear and objective process for creating, modifying or terminating environmental covenants and for recording these instruments which will appear in any title abstract for the property in question.

At the time this Act was promulgated, approximately half the states had laws providing for land use restrictions in some real estate form pertaining to environmental contamination. Those existing laws vary greatly in scope – some simply note the need for land use restrictions, while others create tools similar to many of the legal structures envisioned by this Act. Most such acts apply only to cleanups under a state program. In contrast, this Act includes a number of provisions absent from most existing state laws, including the Act's applicability to both federal and state-led cleanups. It ensures that a covenant will survive despite tax lien foreclosure, adverse possession, and marketable title statutes. The Act also provides detailed provisions regarding termination and amendment of covenants, and includes important provisions on dealing with recorded interests that have priority over the new covenant. There is broad enforcement authority to make sure a covenant does govern the property. Holders are expected to enforce, but any party to the covenant and appropriate agencies may enforce as well. Further, the Act offers guidance to courts confronted with a proceeding that seeks to terminate such a covenant through eminent domain or the doctrine of changed circumstances.

Under the Uniform Act, the governmental regulators who sign an environmental covenant will serve to ensure that the risk assessments and control mechanisms are based on sound science and that affected third parties have notice of the covenant and associated controls. The act specifies that persons with a recorded interest in the property or who are in possession of the property, together with local governments in which the property is located and any other person the agencies require, must be given notice of the covenant. Environmental covenants, and any associated amendments or terminations, must be recorded in the local land records.

It is important to note that Act does not supplant or impose substantive clean-up standards, either generally or in a particular case. The Act assumes those standards will be developed in the prior regulatory process. Rather, the Act validates site-specific, environmental use restrictions that result from the environmental response project which an environmental covenant helps implement. The Act also does not affect the liability of principally responsible parties for the cleanup or any harm caused to third parties by the contamination – rather it provides a method for minimizing the exposure of third parties to such risks and for owners and responsible parties to engage in long-term cleanup mechanisms.

The Uniform Environmental Covenants Act was drafted with the active participation of federal and state environmental regulators, public and private land holders, banking interests, environmentalists, and land use experts. Its uniform enactment nationwide will provide owners, especially owners with properties in multiple states, with the confidence to engage in long-term remediation strategies and use controls, and bring economic growth back to blighted sites and areas.

The Uniform Environmental Covenants Act - An Important Tool for Brownfields Remediation*

By: William R. Breetz, Jr. and Roger D. Schwenke [1]

I INTRODUCTION

In August, 2003 the National Conference of Commissioners on Uniform State Laws ("NCCUSL")[2] adopted the Uniform Environmental Covenants Act ("UECA" or the "Act").[3] UECA is important primarily because it confirms the legal validity and enforceability of recorded use restrictions negotiated in connection with so-called "risk-based clean-ups" of contaminated real estate. Further, as UECA is adopted by the various states, the Act is expected to encourage development of a single, standard approach to the documentation of such clean-ups – materially easing the present uncertainty of how to properly formalize substantive remedial decisions intended to clean up contaminated land.

These outcomes will provide all stakeholders with a long-needed technique to expedite the clean-up of abandoned properties. Because all the affected parties – regulators, buyers, sellers, those legally responsible for the clean-up, lenders, users, title companies and the "green" community – will come to rely on the enforceability of these covenants over time, many more such properties should return to the stream of commerce. Because of the likely health and economic benefits such clean-ups will have in

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* This paper is adapted from an article by the same authors prepared for the Spring 2004 meeting of the American College of Real Estate Lawyers ("ACREL"), which holds the copyright on the original article. The authors are both members of ACREL, and acknowledge with appreciation ACREL's support of this Uniform Act.

[1] William R. Breetz, Jr. is a Uniform Laws Commissioner and chaired the drafting committee on the Uniform Environmental Covenants Act. He is also a member of the Joint Editorial Board on Uniform Real Property Acts that initially proposed the Act.

Roger D. Schwenke served as the American Bar Association's Advisor to the National Conference for the Uniform Environmental Covenants Act. He has previously written a detailed description of the background for the new Act, together with a more detailed explanation of the interrelationship of the Act with state and federal law affecting brownfields property liability. *See* Roger D. Schwenke, *"Applying and Enforcing Institutional Controls in the Labyrinth of Environmental Requirements – Do We Need More Than the Restatement of Servitudes to Turn Brownfields Green?"*, 38 REAL PROPERTY, PROBATE AND TRUST JOURNAL 295 (2003). Analysis and resources developed during the research and writing of that article form the basis of many statements in this paper.

[2] The National Conference of Commissioners on Uniform State Laws is an independent non-governmental organization comprised of representatives from every state, as well as the District of Columbia, the Virgin Islands and Puerto Rico. Voting power is exercised on a basis of "one state, one vote". The purpose of the NCCUSL is to promote uniformity in state law on all subjects where uniformity is desirable and practical. To accomplish this, the Conference drafts Acts on various subjects and endeavor to secure enactment of proposed Acts in every State. Organized in 1892, the Conference has drafted and often redrafted hundreds of Acts in response to changing social and commercial circumstances. Many of those Acts, such as the Uniform Commercial Code, have been universally enacted, or nearly so. In the real estate field, NCCUSL has promulgated the Common Interest Ownership Act, Condominium Act, Marketable Title Act, Non-Judicial Foreclosure Act and others.

Commissioners are appointed pursuant to the particular appointment process of each State. The governors and other appointing authorities have appointed lawyers from every field of legal practice, as well as judges, legislators and law professors. All Commissioners are members of the Bar, and serve without compensation; many commissioners have served for more than 20 years. A small administrative staff assists the Commissioners from its Chicago headquarters.

[3] UECA, as adopted by the Commissioners, can be viewed on a website maintained by the National Conference. *See* UNIF. ENVTL. COVENANTS ACT (Final Act – adopted at the 2003 Annual NCCUSL Meeting), *available at* http://www.environmentalcovenants.org.

their communities, the Act also enjoys broad support from the counties and municipalities where those contaminated properties are located.[4]

Importantly, UECA does not amend any substantive state or federal environmental law that determines when a particular contaminated site must be cleaned up or the standards for that clean-up. As the Prefatory Note to UECA points out:

> This Act does not supplant or impose substantive clean-up standards, either generally or in a particular case. The Act assumes those standards will be developed in a prior regulatory proceeding. Rather, the Act is intended to validate site-specific, environmental use restrictions resulting from an environmental response project that proposes to leave residual contamination in the ground.... Once the governing regulatory authority and the property owner have determined to use a risk-based approach to cleanup to protect the public from residual contamination, this Act supplies the legal infrastructure for creating and enforcing the environmental covenant under state law.[5]

Other important issues remain in this field that UECA does not address. Examples include: (1) the concurrent jurisdiction of state and federal regulators, and the related question of whether a state regulator has any regulatory authority on federally-owned property; (2) the absence of any statutory authority for a regulator to release potentially liable parties from future liability for additional clean-up beyond that contemplated by an environmental covenant; (3) any mechanism for a regulator to use the power of eminent domain or otherwise to impose an environmental covenant in the absence of consent by the owner of the parcel; and (4) provisions designed to provide stakeholders actual notice, as opposed to legal or constructive notice, that contamination exists on a particular parcel.

II WHY WE NEED THIS ACT

Across America, federal, state and local governments struggle with the problem of brownfields – vacant, abandoned and underused sites where environmental contamination caused by long-abandoned commercial practices make it difficult to develop those sites for any economic use.

At many of these sites, the cost of a complete clean-up would exceed by many times the market value of the property. In other situations, no technology may presently exist, regardless of cost, that would result in a totally clean site. And, finally, the practical realities are that there are far more contaminated sites in the United States – some estimates run to over 600,000 such sites – than there are dollars and regulators to achieve the complete clean-up necessary for their unrestricted use. Thus, all the stakeholders have good reasons to seek a cost effective way to encourage re-use of a site based on specified limited uses coupled with specific environmental clean-up requirements - the so-called "risk-based" clean-up - and a plan for periodic monitoring and reporting of conditions.

Today, however, the owner of a contaminated site faces significant disincentives to attempting even a partial clean-up and sale of her site. The primary reason is that the current owner will often remain liable for third party harm caused by the remaining contamination, regardless of whatever use restrictions are placed on the property. In addition, there is a substantial risk in many states that use restrictions placed on the land at the time of transfer might prove unenforceable by the seller against subsequent holders of that real estate because of common law impediments to that enforcement.

For these and many other reasons, that owner today too often decides to retain ownership, close and fence the contaminated property and keep it in an unproductive condition rather than run the risk of third party liability resulting from unenforceable restrictions on development.

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[4] As an example, the International City/County Management Association [ICMA] supports the Act and expects to work for its adoption.

[5] Uniform Environmental Covenants Act, Prefatory Note, www.environmentalcovenants.org, at 3.

UECA seeks to remedy this problem. In addition, UECA addresses a number of other important issues that arise in everyday practice but are not addressed under most current laws.[6] They include:

(1) the inter-relationship between private covenants and local land use laws;
(2) a statutory minimum standard necessary to satisfy title and recording requirements;
(3) appropriate statutory treatment of the regulator's role;
(4) considerations of the interplay between the statute's treatment of the environmental covenant and other law of the state governing judicial or private party consideration of the rights of real property subject to that covenant;
(5) the impact of recorded covenants on the rights of both senior and subsequent interest holders in that real estate;
(6) consideration of the mechanics for amending or terminating covenants over time, particularly when certain of the original parties to a covenant may be absent or non-cooperative;
(7) policy considerations of who may enforce these covenants - a particular vivid example of the clash between the traditions of real estate and environmental lawyers; and
(8) a multitude of similar matters.

Finally, as the drafters of UECA came to realize, attorneys and other professionals engaged in real estate practice are often unfamiliar with the vocabulary and expectations of the environmental law field, and vice versa; environmental lawyers appear at times to have little appreciation of the conventions of real estate practice.[7] As a result, in a particular transaction, professionals from those two cultures often have difficulty addressing the expectations of their counterparts. The authors anticipate that because UECA incorporates important practices from both perspectives, it will create a negotiation protocol that meets the expectations of both groups.

III THE DRAFTING PROCESS

The Uniform Environmental Covenants Act was developed over a nearly three year period before its final adoption in August, 2003. The project began with a study committee meeting of the Joint Editorial

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[6] A few states, such as Montana and Colorado, specifically regulate these controls under a separate act; see, e.g., Mont. Code Anno. § 75-10-727 (2000), 2001 Colo. SB 145 (Colorado), A.R.S. § 49-158 (2000) (Arizona). Few of these are comprehensive statutes comparable to UECA. Other states have provided for these controls within a comprehensive statute dealing with brownfields or clean-ups more generally. *See, e.g.,* MCLS §324.20120b (2001) (Michigan), N.C. Gen. Stat. § 130A-310.30 et seq (2000), N.J. Stat § 58:10B-1 et seq. (2001). The state programs of Massachusetts, Iowa, Michigan, Connecticut, California and Colorado are briefly examined and contrasted as a part of the Roger Schwenke article cited at note 1. *See* Schwenke at 339-343.

While several states have made commendable statutory efforts, they are neither universal, nor are they all comprehensive. For example, only Indiana and Florida appear to have dealt with the question of whether the environmental land use restrictions will be exempt from the Marketable Title Act provisions. *See* Burns Ind. Code Ann. § 32-1-5-2(f) 2000; § 712.03(8), *Fla. Stat.* (2003).

Finally, at the federal level, both the Environmental Protection Agency (EPA) and the Department of Defense (DOD) have substantial policies for institutional controls, but these do not address state property law issues. See, e.g., Department of Defense Policy on Land Use Controls Associated with Environmental Restoration Activities (Jan. 17, 2001) and Responsibility for Additional Environmental Cleanup after Transfer of Real Property, July 25, 1997. Federal Facilities Branch Land Use Assurance at Federal Facilities, April 13, 1998. (EPA Region 4). EPA, Institutional Controls and Transfer of Real Property under ERCLA Section 120(h)(3)(A), (B) or (C), February, 2000.

[7] An example of this dynamic arose during the drafting process when environmental lawyers professed to have no knowledge of the potential effects that Marketable Title acts might have on recorded environmental covenants.

Board on Real Property Acts in June, 2001[8]. In addition to members of the Joint Editorial Board, about 35 diverse stakeholders attended. The unanimous view of those present was that a uniform act could make a valuable contribution to the field. A report to that effect was considered at NCCUSL's annual meeting in August, 2001.[9]

Based on that report, and with significant financial support from the U.S. Department of Defense, NCCUSL formed a committee to draft a possible uniform act. This committee, together with approximately 25 invited representatives of stakeholder groups, held its first of five 3-day weekend drafting meetings in November, 2001. That Committee also met frequently with its advisors during the annual meetings of the NCCUSL in 2002 and 2003.

While the drafting process was underway, the Chair and Reporter of the drafting committee prepared a paper in conjunction with a conference on the proposed Act held at the University of Connecticut School Of Law. The paper identified the principal drafting goals, including elimination of common law impediments to servitudes (such as the requirement that there be vertical and horizontal privity, that the benefited real estate be appurtenant, and that the restriction touch and concern the land).[10]

IV SUMMARY OF ADVANTAGES

A. Definitions. Several definitions contained in Section 2 of UECA are important. First, **"Activity and use limitations"** means "restrictions or obligations created under [UECA] with respect to real property". As discussed in more detail below, regulators and environmental lawyers currently use similar concepts of mandated "deed restrictions" or "institutional controls"[11] in connection with site

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[8] The Joint Editorial Board is comprised of representatives of ACREL, the ABA's Real Property, Probate and Trust section and the Uniform Laws Conference, as well as liaison representatives from the American College of Mortgage Attorneys and the Community Associations Institute.

[9] *See* Final Report of the Joint Editorial Board on Real Property Acts to the Scope and Program Committee, National Conference of Commissioners on Uniform State Laws (July 23, 2001) [the "JEB Report"], *available at http://www.law.upenn.edu/bll/ulc/ulc_frame.htm* at 8.

[10] *See* THE BENEFITS OF A UNIFORM STATE LAW FOR INSTITUTIONAL CONTROLS, by Kurt A. Strasser and William Breetz, Jr., for the 10th Annual Gallivan Conference on Real Estate Law, University of Connecticut School of Law, October 4, 2002, at 5-6. [the "Gallivan Paper"]. The Gallivan Paper can also be viewed from a sub tab of the "Materials" portion of the webpage for the UECA cited at footnote 2 of these materials. The Gallivan Paper traces the history of the drafting effort, including further details of the Joint Editorial Board review and report described in note 9 above.

[11] Restrictive covenants affecting land use for environmental purposes can be imposed by a number of different instruments. Until recently, regulatory agencies usually referred to "deed restrictions" when describing the context for the creation of such covenants and controls. Perhaps this is because many regulatory agencies acted as if any restrictions had to be imposed as a part of a deed. More recently, the potential for the use of covenants as a viable and enforceable part of environmental remediation has expanded, and both the EPA and state agencies have become more knowledgeable in their use of appropriate real estate terminology. Although some states still retain and use the term deed restrictions, there seems to be less use of deed restrictions, and much more use of terms such as "institutional controls," "environmental covenants," and "activity and use limitations." Some states use activity and use limitations to refer to measures that restrict the use of a site while allowing contamination to remain at the site at levels in excess of what would be allowed for unrestricted use. *See, e.g.,* MASS. GEN. LAWS ch. 21E, § 2 (2002) (defining "activity and use limitation" as "a restriction, covenant or notice concerning the use of real property which is imposed upon real property by a property owner or the department [of Environmental Protection]"). The Massachusetts Contingency Plan identifies these limitations as one of the three different types of institutional controls it contemplates using, which include a Grant of Environmental Restriction, a Notice of Activity and Use Limitation, or an Environmental Restriction imposed by the state. *See, e.g.*, MASS. REGS. CODE tit. 310, § 40.1070 (2003).

The ASTM International (formerly the American Society for Testing and Materials) ("ASTM") [the same organization that brought real estate lawyers the now infamous "phase I" and "phase II" environmental site assessment "ASTM" reports] uses the term "activity and use limitations" in its standard covering access and land-use controls in the context of environmental regulatory programs. *See* Standard Guide for Use of Activity and Use Limitations, Including Institutional and Engineering Controls (E2091-00). *See generally*, Amy L. Edwards, *Institutional Controls: The Converging Worlds of Real Estate and Environmental Law and the Role of the Uniform Environmental Covenants Act*, 35 CONN. L. REV. 1255, 1266-68 (2003).

remediation.

Under UECA, those activity and use limitations must be reflected in a recorded instrument known as an **"environmental covenant'**. This term is defined as "a servitude arising under an environmental response project that imposes activity and use limitations."

Finally, the term **"environmental response project"** means any plan or work performed for environmental remediation of real property that is conducted under any federal or state environmental remediation program, including a state voluntary clean-up program.

B. Substantive Outcomes. These are the highlights of what UECA accomplishes:

- Section 3 recites a variety of rules that will comport with the expectations of real estate lawyers concerning the priorities of environmental covenants over pre-existing mortgages and other senior interests.

- Under Section 4, the contents of an environmental covenant must include a description of the property, describe the activity and use limitations, and identify each party entitled to enforce its provisions.

- Section 4 also requires that the covenant must be signed by the state environmental or other regulatory agency, and by the owner of the affected real estate, as a condition of its effectiveness.

- Under Section 5, an environmental covenant that complies with the Act will "run with the land" and be valid even though it has specific characteristics that would invalidate it under traditional doctrines of common law (*see* discussion below).

- Section 6 provides that an environmental covenant does not override land uses prohibited by local zoning law, but may impose restraints more stringent than local zoning law.

- Section 8 makes clear that an environmental covenant must be properly recorded in the local registry of deeds.

- Section 9 provides that the duration of an environmental covenant is perpetual, unless otherwise so stated, or terminated or modified pursuant to specified procedures. That same section also protects covenants against certain future events that might otherwise extinguish or impair it, such as foreclosure of a tax lien or adverse possession, or extinguishment under Marketable Title or Dormant Mineral Interest acts. Finally, this section seeks to reconcile the authority of a court to review the validity of covenants in the face of eminent domain and "changed circumstances" challenges with what the drafting committee felt was appropriate deference to administrative oversight of the contaminated real estate.

- Section 10 contains protections that seek to insure the validity of a covenant, by guarding against amendments or termination of use restrictions or requirements without consent of the parties that might be affected by the changes.[12]

However, state brownfields and voluntary remediation statutes seem to use the term "institutional control" rather than "activity and use limitation" or "land-use control" much more often. This is true as well in applications of the concept to CERCLA, such as those included in the National Contingency Plan that directs EPA's administration of the CERCLA statute (*see, e.g.* 40 C.F.R. pt. 300.430(a)(1)(iii), and even more so in the recent changes to CERCLA in the Small Business Liability Relief and Brownfields Revitalization Act of 2001, -- *See* 42 U.S.C. § 9628(b)(1)(C) (2003).

[12] The Official Comments to UECA Section 10 contain a useful example of the chain of potential liability that may exist with respect to successors in interest to the original polluter, including those who own or use the contaminated real estate and those who succeed to ownership of the assets or stock of the polluting company. This

- Section 11 makes clear that the regulatory agency and other specified parties are authorized to enforce the covenants to obtain specific performance. The Act does not authorize suits for money damages.

Finally, the Act makes clear that it may be used to document a clean-up by both state and federal regulatory agencies in any state that enacts the bill.

V ANALYSIS OF SELECTED ISSUES

A. What are "Activity and Use Limitations"? The core goal of UECA is to confirm the validity of these restrictions and limitations on the use of contaminated real estate. Some examples of commonly used "activity and use limitations" - or "land use controls" or "institutional controls" as they are often known in current practice - may be useful.

(1) In an area in which soil is extensively contaminated, such a limitation might provide that surface soils must be removed during remediation, but deeper contamination might be allowed to remain in place;

(2) Use restrictions might be imposed to allow a factory or garage, while prohibiting residential use of some or all of the parcel;

(3) When contaminated groundwater will remain in place for an extended period of time, an appropriate activity and use limitation might prohibit drilling of wells on the property;

(4) If waste is to be left on a site, some physical controls – a fence or asphalt paving – may be required to prevent any access or damage to the contaminant barrier, with an additional prohibition on any excavations into that barrier to prevent access to contaminated soil.

Currently, EPA and state environmental agencies often use the term "institutional controls", rather than "activity and use limitations", when discussing such environmentally-driven land use restrictions. EPA defines institutional controls as: "[n]on-engineered instruments, such as administrative and/or legal controls, that help minimize the potential for human exposure to contamination...by limiting land or resource use."[13]

The EPA explanation observes that these "are generally to be used in conjunction with, rather than in lieu of, engineering measures such as waste treatment or containment; can be used during all stages of the cleanup process to accomplish various cleanup-related objectives; and should be "layered" (i.e., use multiple [institutional controls]) or implemented in a series to provide overlapping assurances of protection from contamination."[14]

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becomes relevant under UECA as the agency considers who must sign a covenant and who must consent to its amendment or termination.

[13] Envtl. Prot. Agency, *Institutional Controls*, *available at* http://www.epa.gov/superfund/action/ic/index.htm.

[14] ENVTL. PROT. AGENCY INSTITUTIONAL CONTROLS: A SITE MANAGER'S GUIDE TO IDENTIFYING, EVALUATING AND SELECTING INSTITUTIONAL CONTROLS AT SUPERFUND AND RCRA CORRECTIVE ACTION CLEANUPS (Sept. 2000) *available at http://www.epa.gov/superfund /action/ic/guide/guide.pdf* (hereinafter "Site Manager's Guide"). The EPA also notes that its definition does not include engineering controls or restrictions, such as physical barriers or fences. *See id.* at 2. An example of stacked or layered institutional controls, referenced in the definition, might include a property owner's granting a restrictive covenant to a purchaser or tenant, while at the same time filing a statutory notice of the restriction with a regulatory agency, together with a grant to the agency of a right to enforce the restriction. The Site Manager's Guide provides one of the most all-encompassing definitions and descriptions of different types of available institutional controls. It

Even though the EPA's definition of institutional controls does not encompass engineering controls, the two are often used together today, and UECA contemplates that outcome. Examples of engineering controls would include impermeable caps (which might also be nothing more than an impervious parking lot surface), trenches, or other physical barriers that could physically separate people from contact with contaminated materials.

B. Environmental Covenants and Common Law Impediments. The drafting committee concluded that its goal of validating recorded activity and use limitations as a part of an environmental clean-up could best be accomplished by treating the instrument containing those limitations as a real estate servitude and adopting statutory language that most members of the committee felt was the "trend of modern property law", as reflected in the American Law Institute's Restatement of the Law of Property (Servitudes) (3d), which had been completed and released shortly before the UECA drafting process began.[15]

The definition of a servitude in the Restatement—"a legal device that creates a right or an obligation that runs with land or an interest in land"—and the identification of the types of servitudes covered by the Restatement—"easements, profits, and covenants"— encompasses many of the concepts that are commonly used today in connection with the process of cleaning up contaminated land.

Section 5 of UECA embraces the Restatement's outcome with regard to the enforceability of servitudes by stating, first, that "[a]n environmental covenant that complies with this [act] runs with the land". Second, this section declares that an environmental covenant that is otherwise effective is valid and enforceable even if it would have been invalid at common law for any one of several enumerated reasons.

The committee's decision to use the term "environmental covenant" and to characterize that covenant as a "servitude" effectively abandons, for purposes of this Act, many of the common law distinctions and jargon that are increasingly obsolete in modern practice. The committee also intended to make clear that environmental covenants were interests in real estate and that, as with any instrument creating such an interest, the instrument creating it should be recorded in order to confirm that the interest is reflected in the chain of title.[16]

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includes a matrix with lists of the different types of institutional controls and the corresponding benefits, limitations, and enforcement issues that the EPA believes would usually be associated with each type. *See id.* at 17-27.

[15] *See* RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES (2000) at § 1.1. [hereinafter "Restatement"] The Restatement discusses easements and profits with greater detail in section 1.2. Likewise, section 1.3 discusses and defines one of the types of servitudes most often used for environmental purposes—the covenant. Section 1.3 goes on to explain that "[t]he nature of the burden determines whether a covenant is affirmative or negative. An 'affirmative covenant' requires the covenanter to do something; a 'negative covenant' requires the covenanter to refrain from doing something." This section also explains that a "restrictive covenant" is a negative covenant that limits permissible uses of land.

[16] In the earliest stages of the drafting effort, both the name of the Act and the nature of the instrument creating the use restrictions were intensely debated When this project began, the Act was entitled, as it ultimately evolved, the "Uniform Environmental Covenants Act", in part because the term "environmental covenant" was one that had been used in many states to describe an agreement between a private land owner and an environmental regulatory agency to place some type of "environmental land use restriction" on that owner's property.

By the end of 2002, the drafting committee had decided that the Uniform Act should focus on a covenant, to be termed an environmental covenant even though, as the definitions in the final text of the Act point out, the environmental "covenant" contemplated by the Act is defined as a "servitude". As the Official Comments which accompany Section 2 of the Act point out:

> This Act emphasizes that an environmental covenant is a servitude in order to implicate this full body of real property law and to sustain the validity and enforceability of the covenant. By first characterizing the environmental covenant as a servitude, the Act expressly avoids the argument that an environmental covenant is simply a personal common law contract between the agency and the owner of the real property at the time the covenant is signed, and thus is not binding on later owners or tenants of that land.

Real estate lawyers recognize that the common law of servitudes is obscure and difficult and that, as a consequence, it is often difficult to predict the outcome of a particular case. As one commentator observed:

> The law in this area is an unspeakable quagmire. The intrepid soul who ventures into this formidable wilderness never emerges unscarred. .... On looking back they see the trail they thought they broke obscured with foul smelling waters and noxious weeds. Few willingly take up the challenge again.[17]

Unfortunately, the doctrine still haunts the practice of real estate. For example, the recent federal case of ***Refinery Holding Co. v. TRMI Holdings, Inc.*** [18] involved an oil refinery that a subsidiary of Texaco had conveyed to El Paso. The deed contained this language:

> Grantee [El Paso Ltd.] covenants and agrees that it shall never, directly or indirectly, attempt to compel Grantor [TRMI] to clean up, remove or take remedial action or any other response with respect to any of the buried sludge sites, the waste pile site, the Active Hazardous Waste Storage Sites, the underground liquid petroleum and petroleum vapors (including, without limitation, any leaching therefrom or contamination of the air, ground or the ground water thereunder or any effects related thereto), or any and all waste water treatment ponds or treatment systems on or in the vicinity of said premises or seek damages therefor. <u>This covenant shall run with the land and shall bind Grantee's successors, assigns and all other subsequent owners of the property.</u>[19]

In 1992, El Paso filed for bankruptcy; notwithstanding the deed restriction, the successor in title sought to assert contribution and environmental claims against Texaco and its subsidiary. The Court allowed the claim after concluding that under Texas law the deed restriction did not qualify as a covenant running with the land.[20] The opinion indicates that the Fifth Circuit was aware of the Restatement and the potential changes that adherence to a Restatement approach could bring to the outcome.[21] However,

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The concept that the environmental covenant should create an interest in the real property subject to the covenant was also a subject of considerable debate. The committee considered at great length the Colorado statute treating this same subject; for a detailed analysis of the content and evolution of the Colorado statute, and of its approach to the creation and enforcement of environmental covenants, *see* Daniel Miller, *Putting the "Institution" in State Institutional Control Laws: Colorado's Senate Bill 145*, 35 CONN. L. REV. 1283 (2003). Mr. Miller was a very active participant, as an invited advisor, in the UECA drafting committee meetings.

The Colorado Attorney General takes the position that the Colorado statute does <u>not</u> create a property interest in the affected land, but instead creates a regulatory, police power interest related to the land. In an effort to compromise with the views of both Colorado and counsel for EPA, however, Section 3(a) of UECA provides that even though the "interest" of a holder is an interest in real estate, the rights of an "agency" under the Uniform Act or under an approved environmental covenant, other than the agency's rights as a "holder", are <u>not</u> interests in real estate.

[17] Susan F. French, *Reweaving the Ancient Strands*, 55 S. CAL. L. REV. 1261 n.1 (1982) (quoting E. RABIN, FUNDAMENTALS OF MODERN REAL PROPERTY LAW 489 (1974)).

[18] 302 F.3d 343 (5th Cir. 2002)

[19] *Id.* at 355(emphasis added).

[20] *Id at 357.*

[21] *See id.* at 356. n.19.

"[b]ecause Texas has not yet adopted this approach, we do not address in this opinion the numerous policy arguments advanced by both parties."[22]

The El Paso decision is consistent with many other cases holding that such covenants are personal in nature and do not run with the land.[23] This outcome has very real consequences; commentators have observed that common law prohibitions on easements in gross and requirements that a covenant must touch and concern the affected land adversely affect the ability of regulatory agencies to document their agreements and have precluded developers and lenders from involvement in brownfields remediation.[24]

The authors believe that UECA's policy as stated in Section 5 will effectively resolve these doctrinal restrictions.[25] In doing so, UECA follows the example of the Uniform Conservation Easements Act[26] and a number of specific state statutes implementing it.[27]

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[22] *Ibid.* The opinion is dated August 22, 2002, but the court cites section 3.2 from Tentative Draft No. 2 to the Restatement, adopted in 1991. The final version of the Restatement of Servitudes was approved by the American Law Institute in May, 1998, and the published volumes appeared in May, 2000, so it is unclear why the opinion cites a draft from several years earlier. Professor Susan French, Reporter for the Restatement, has criticized the outcome, terming the court's analysis formalistic. *See* Susan F. French, "*Can Covenants Not to Sue, Covenants Against Competition and Spite Covenants Run with Land? Comparing Results under the Touch or Concern Doctrine and the Restatement Third, Property (Servitudes)*", 38 REAL PROPERTY PROBATE & TRUST J. 267, 272-73 (2003).

[23] *Compare*, for example, Calabrese v. McHugh 170 F. Supp. 2d 243 (D. Conn. 2001) (holding that a disclosure and release and covenant not to sue in a deed—despite its inclusion in a recorded deed in the chain of title and despite a clearly stated intent to bind successors in the chain of title—did not touch or concern the land and was not appurtenant to the land and because the release neither conferred a benefit on the remaining land that had been a part of the contaminated landfill, nor did it impose any burden on the property, the release and corollary notice provisions were personal and not running with the land) *with* Chemotti v. State, 88 N.Y.S.2d 879 (N.Y.Ct. 1949) (holding that a release of the State of New York from liability damages to real estate, which was recorded, was a covenant running with the land and therefore binding on the plaintiffs as successors in title to that agreement).

[24] Regarding the effect on agency decision-making, s*ee generally* John Pendergrass, *Use of Institutional Controls as Part of a Superfund Remedy: Lessons From Other Programs,* 26 Envtl. L. Rep. 10109, 10120-22 (March 1996), and the Final Report of the Joint Editorial Board on Real Property Acts to the Scope and Program Committee, NCCUSL (July 23, 2001), *supra* note 28, in which the Board draws this same conclusion. As to the negative impact on developers and lenders, *see* ENVIRONMENTAL LAW INSTITUTE , *An Analysis of State Superfund Programs: 50-State Study 2001 Update* (2002), at 46; *see generally* IMPLEMENTING INSTITUTIONAL CONTROLS AT BROWNFIELDS AND OTHER CONTAMINATED SITES, at Ch. 2 (Amy L. Edwards, ed., 2003) [hereinafter IMPLEMENTING INSTITUTIONAL CONTROLS] and Amy L. Edwards, *Institutional Controls: The Converging Worlds of Real Estate and Environmental Law and the Role of the Uniform Environmental Covenants Act*, 35 CONN. L. REV. 1255, 1256-57, N. 10.

[25] *See* Gallivan Paper, *supra* note 10, at 6. *See generally* Restatement, § 1.6, and chapters 2 and 3. For specific doctrines, see RESTATEMENT, §§ 2.4 (horizontal privity), 2.5 (benefited or burdened estates), 2.6 (benefits in gross and third party benefits), 3.2 (touch and concern doctrine), and 3.5 (indirect restraints on alienation). The Final Report of the Joint Editorial Board led to the creation of the NCCUSL Drafting Committee for the UECA. The report recognized that "impediments include limitations inherent in doctrines such as easements or covenants in gross," and that "the necessity that covenants 'run with' or 'touch and concern' the land, and similar doctrines" leaves developers without "sufficient assurances regarding the binding nature and enforceability of the covenants in order to invest in the clean-up." Based on its observations about such impediments, the Board recommended a uniform act that would resolve these common law problems, would deal with the manner of enforcing such covenants, would contain a provision for notice of the existence of the covenants, and would establish the need for long-term stewardship for properties subject to such covenants. *See* JEB Report, *supra* note 9, at 5.

[26] The Uniform Conservation Easements Act § 4 has been adopted in 22 states. All but three states have some form of conservation easements act. RESTATEMENT, § 1.6, Comments.

[27] Those states are AL, AK, AZ, AR, DE, DC, IO, IN, KS, KY, ME, MN, MI, NV, NM, OR, SC, TX, VA, WV, and WI.

C. **Covenant Enforcement.** Enforcement by private third parties is common in environmental matters but virtually unknown in property law. In the evolution of UECA, the drafting committee grappled to find the proper balance to these competing positions. The enforcement question, of course, is intertwined with: the effect of these new covenants on the pre-existing interests of third parties such as existing mortgage holders; the consequences of foreclosure of encumbrances on the contaminated property; the impact of foreclosure of unpaid municipal tax liens; and the consequences of a variety of other statutes and doctrines intended to limit the long term effect of recorded instruments on the free alienability of land. These latter issues are briefly addressed elsewhere in this paper.

While this issue will continue to be controversial, UECA strikes a balance between these competing interests. First, the committee declined to create a new "citizens' enforcement right", although such a right may exist under other law of the state. Second, Section 11 empowers a number of persons, besides a party to the covenant, to enforce it, including the agency, any person to whom the covenant expressly grants a power to enforce, any one whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant and the local government in which the real property subject to the covenant is located.

D. The Concept of a "Holder". UECA requires that each environmental covenant identify a "holder" to be the grantee of the covenant.[28] Section 2(6) defines a "holder" as "the grantee of an environmental covenant as specified in Section 3(a)." Section 4 requires the covenant to identify every holder and to describe any duties of the holder other than its statutory right to enforce the covenant under Section 11. The drafting committee expects that, over time, this concept may become an effective means by which private parties or non-governmental organizations identified as holders may retain long-term stewardship responsibilities for maintaining the physical condition of contaminated property and monitoring its use. These could include, for example, the obligation to monitor groundwater or maintain a cap or containment structure on the property. Such rights and obligations will be specified in the environmental covenant and, like any obligations, would be enforceable against the holder if the holder failed to satisfy its obligations.

The concept of a holder is consistent with the traditional real estate principle that an interest in real estate must be held by someone. Under Section 5(b)(9), however, that holder may simultaneously be the grantor – that is, the current owner of the property –or any other person. The Act contemplates that a grantor/holder might remain a holder upon sale of her property, or simply continue to serve in a dual capacity in order to satisfy the statute's requirement. This is plainly a departure from traditional real property concepts.

Section 3 makes clear that the holder's interest is an interest in real property and states that if the agency chooses to be the holder, the agency will thereby hold an interest in the real property. Otherwise, Section 3 (b) provides that the agency's interest in the covenant as a consequence of signing the covenant or having a right to enforce it under this Act is not an interest in real property.

VI THE IMPORTANCE OF UNIFORMITY

A significant question is whether NCCUSL and the interest groups that will benefit from UECA can make a convincing case for the intangible but overwhelming benefits of a single, uniform Act that is the same in every state.

This is a field that cries out for a single, standard approach to the documentation of risk-based clean-ups. The big gain from uniformity, in our view, is that national interests, such as DOD, EPA, DOE, national lenders, national developers, national associations of stakeholders of every persuasion [Green to

[28] Official Comment 7 to Section 4 provides that "[a] holder is the grantee of the environmental covenant and the Act requires that there be a holder for a covenant to be valid and enforceable."

PRP], won't have to parse competing state statutes when considering a deal in any state. The certainty that flows from one law and one "common" method of documenting a deal seems irrefutable. Practice manuals, standard forms, seminars, underwriting guidelines, shared learning - all are consistent when there is only one law and one process, not 50, to deal with. New thinking and new strategies come more quickly. Transaction costs are reduced while deals happen faster and with greater certainty. And capital will surely flow more readily in these circumstances, as any banker or deal lawyer knows.

The economic benefits of uniformity have been persuasively and successfully argued with regard to the Uniform Commercial Code and many other uniform acts. To bring that benefit to fruition, however, it is essential not only to achieve widespread enactment of UECA but also to resist changes that may be advocated during the legislative process by special interest groups.

There will be interests in every state, however, that prefer the law they know [regardless of subject] to the law they don't know. Further, it is certainly true that states that have already acted in this field – California, Massachusetts, Colorado and Connecticut, for example - do accomplish risk-based clean-ups today under existing laws.

But it is also true that the UECA drafting committee had the great benefit of that earlier work, plus the work and thinking of many other thoughtful drafters and the luxury of time. The committee was therefore able to adapt what it considered were the best elements of existing statutes, and the best thinking of an outstanding group of advisors, on all the issues that confronted it. The unanimously positive reaction to UECA by third party commentators and stakeholders confirms that conclusion.

In urging a uniform pattern of adoptions, UECA's advocates must stress that no legal problem is created when new state law supersedes an old law covering the same subject. Most states have already done so in far more complicated fields, such as the wholesale revisions to corporate law in the 1990's based on the model ABA corporate law. Certainly a good real estate practitioner would be gratified by a savings clause in State law expressly validating covenants drafted under prior law - and the Conference would be happy to assist in drafting such a provision. But in most states, in a comparable situation in the 70s, 80s and 90s, "old" condominium statutes were readily supplanted by "new" condominium statutes - and the sky did not fall.

VII THE FUTURE

NCCUSL and many interest groups are engaged on several fronts in promoting UECA. Three initiatives are particularly significant:

50 State Study - The Conference is currently compiling a 50 state study comparing the results under UECA with each state's law, based on the criteria judged to be important by the committee and its advisors. We believe that more than half the states have no statute at all addressing these subjects.

National Education Effort - The Conference has embarked on a national education effort designed to support widespread uniform adoption of UECA. To that end, the Conference has sought funding from interest groups across a broad spectrum of interests, all of which would benefit from wide adoption of UECA. The first $75,000 of funding has been received and the Conference expects to mount a multi-year effort to educate legislatures about the benefits of the Act.

Introductions- Finally, wherever there appears to be local interest, UECA is currently being introduced across the country. As of the Fall of 2004, the Act had been introduced in Pennsylvania, Ohio and Nebraska and proponents in all 3 states are optimistic of passage. A number of other introductions are anticipated. In some states that already have legislation addressing this issue, the Conference expects some delay in that introduction process.

VIII CONCLUSION

The Uniform Environmental Covenants Act is an important tool in revitalizing America's inner cities and other areas where vacant and underused properties prevent vital redevelopment and economic expansion. It was drafted with the active participation of federal and state environmental regulators, public and private landholders, banking interests, environmentalists, and land use experts.

UECA's tools can significantly improve the process of environmental clean-up and the re-use of contaminated property. These tools make risk-based clean-ups feasible by protecting against the risks presented by the residual contamination. Yet to achieve this protection, the terms of the controls must be clearly documented and their enforcement must be realistically assured. With careful covenant drafting, appropriate monitoring and adequate funding from both public and private sources, the potential of this new tool can be fully realized.

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S.F. No. 1426 - Uniform Environmental Covenants Act

Author: Senator John Hottinger

Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394) K.P.

Date: March 22, 2006

This bill enacts the Uniform Environmental Covenants Act. Materials prepared by the Uniform Laws Commissioners are attached. Following is a summary of the author's amendment.

Section 1 contains the citation.

Section 2 contains the definitions.

Section 3 specifies the nature of rights; role of the environmental agency, and subordination of interests. The interest of a holder of an environmental covenant would be an interest in real property. Unless an environmental agency is a holder, any right the agency has would not be an interest in real property. Other provisions are included with respect to the rights and responsibilities of the environmental agency. Rules applicable to interests in real property in existence at the time a covenant is created or amended are specified.

Section 4 contains the required and permissive contents of an environmental covenant.

Section 5 contains rules with respect to the validity of an environmental covenant and its effect on other instruments.

Section 6 addresses the relationship to other land-use laws.

Section 7 contains notice requirements applicable to an environmental covenant. Failure to provide notice would not affect the validity of a covenant.

Section 8 contains recording requirements.

Section 9 address the duration of an environmental covenant and amendment by court action. An environmental covenant would be perpetual, subject to specified limitations.

Section 10 deals with the amendment or termination of an environmental covenant.

Section 11 contains enforcement provisions.

Section 12 contains the standard uniformity of application and construction language for uniform acts.

Section 13 addresses the relationship to electronic signatures in the Global and National Commerce Act.

Section 14 amends the statute under which the Attorney General may recover certain costs of litigation to add a cross-reference to the new environmental covenants law.

Section 15 amends the statute dealing with the acquisition of property under the Environmental Response and Liability Act to include a reference to environmental covenants and makes other conforming changes.

KP:cs

Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Environmental Covenants Act

Virtually everywhere in America, state and local governments are struggling with the problem of brownfields – vacant, abandoned and underused sites with various forms and degrees of environmental contamination. Reclaiming many of these sites for beneficial uses is very difficult and very expensive. Total cleanup, if possible, would often cost much more than the market value of the property. However, if a legal mechanism can be developed for long term control of use and clean-up or remediation (the current term of art), some properties may be safely returned to use and may be bought and sold. Current real property law is inadequate. Various common-law doctrines and other legal rules often work against such long-term controls, a situation which undermines the use and marketability of contaminated property.

In 2003, the Uniform Law Commissioners have promulgated the Uniform Environmental Covenants Act to overcome the inadequate common law rules. The statutory legal mechanism it creates is called an "environmental covenant." Covenants are generally recognized in the common law as a means of conveying restrictions on use of land. The environmental covenant relies on the common law base, but re-creates it for the specific purpose of controlling the use of contaminated real estate, perpetually if necessary, while allowing that real estate to be conveyed from one person to another subject to those controls.

An environmental covenant is a specific recordable interest in the real estate. It arises from an environmental response project that imposes activity and use limitations. Such a project must arise under an appropriate federal or state program or approval for clean up of the property or closure of a waste management site. No environmental covenant is effective without the relevant agency signature. The interest is created in a specific instrument for the purpose. The instrument recites the controls and remediation requirements imposed upon the property. The rights under the covenant must be granted to a party or parties called the holders. The covenant is perpetual unless limited in time within the instrument. It runs with the land and does not have to be "appurtenant." This means it cannot be extinguished when one owner transfers rights or interests in the property to another, no matter who the holders are.

Two principal policies are served by confirming the validity of environmental covenants. One is to ensure that land use restrictions, mandated environmental monitoring requirements, and a wide range of common engineering controls designed to control the potential environmental risk of residual contamination will be recorded in the land records and effectively enforced over time as a valid real property servitude. This Act reverses the variety of common law doctrines that cast doubt on such enforceability.

A second important policy served by this Act is the return of previously contaminated property, often located in urban areas, to the stream of commerce. The environmental and real property legal communities have often been unable to identify a common set of principles applicable to such properties. The frequent result has been that these properties do not attract interested purchasers and therefore remain vacant, blighted and unproductive. This is an undesirable outcome for communities seeking to return once important commercial sites to productive use. Large numbers of contaminated sites, often known as brownfields, are unlikely to be successfully recycled until regulators, owners, responsible parties, affected communities, and prospective purchasers and their lenders become confident that environmental covenants will be properly drafted, implemented, monitored and enforced for so long as needed. This Act should encourage transfer of ownership and property re-use by offering a clear and objective process for creating,

modifying or terminating environmental covenants and for recording these instruments which will appear in any title abstract for the property in question.

At the time this Act was promulgated, approximately half the states had laws providing for land use restrictions in some real estate form pertaining to environmental contamination. Those existing laws vary greatly in scope – some simply note the need for land use restrictions, while others create tools similar to many of the legal structures envisioned by this Act. Most such acts apply only to cleanups under a state program. In contrast, this Act includes a number of provisions absent from most existing state laws, including the Act's applicability to both federal and state-led cleanups. It ensures that a covenant will survive despite tax lien foreclosure, adverse possession, and marketable title statutes. The Act also provides detailed provisions regarding termination and amendment of covenants, and includes important provisions on dealing with recorded interests that have priority over the new covenant. There is broad enforcement authority to make sure a covenant does govern the property. Holders are expected to enforce, but any party to the covenant and appropriate agencies may enforce as well. Further, the Act offers guidance to courts confronted with a proceeding that seeks to terminate such a covenant through eminent domain or the doctrine of changed circumstances.

Under the Uniform Act, the governmental regulators who sign an environmental covenant will serve to ensure that the risk assessments and control mechanisms are based on sound science and that affected third parties have notice of the covenant and associated controls. The act specifies that persons with a recorded interest in the property or who are in possession of the property, together with local governments in which the property is located and any other person the agencies require, must be given notice of the covenant. Environmental covenants, and any associated amendments or terminations, must be recorded in the local land records.

It is important to note that Act does not supplant or impose substantive clean-up standards, either generally or in a particular case. The Act assumes those standards will be developed in the prior regulatory process. Rather, the Act validates site-specific, environmental use restrictions that result from the environmental response project which an environmental covenant helps implement. Implicit in use controls is the fact that, despite best efforts, total cleanups of many contaminated sites are not possible, but property may be put to limited uses without risk to others, nonetheless. The Act also does not affect the liability of principally responsible parties for the cleanup or any harm caused to third parties by the contamination – rather it provides a method for minimizing the exposure of third parties to such risks and for owners and responsible parties to engage in long-term cleanup mechanisms.

The Uniform Environmental Covenants Act is an important tool in revitalizing inner cities and other areas where vacant and underused properties are preventing vital redevelopment and economic expansion. It was drafted with the active participation of federal and state environmental regulators, public and private land holders, banking interests, environmentalists, and land use experts. Its uniform enactment nationwide will provide owners, especially owners with properties in multiple states, with the confidence to engage in long-term remediation strategies and use controls, and bring economic growth back to blighted sites and areas.

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Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

Why States Should Adopt the...

Uniform Environmental Covenants Act

The Uniform Environmental Covenants Act (UECA), drafted and approved by the National Conference of Commissioners on Uniform State Laws in 2003, allows for the long-term enforcement of clean-up controls (restrictions on certain uses, prohibitions on using wells, protection of concrete "caps", maintenance of monitoring equipment, etc.) to be contained in a statutorily-defined agreement known as an "environmental covenant" which will be binding on subsequent purchasers of the property and be listed in the local land records. The fundamental purpose of this act is to remove various legal impediments to the use of such restrictions and to thereby lessen liability concerns of sellers and lenders associated with the redevelopment and sale of "brownfields" while at the same time requiring state approval of the remediation and control plan as well as notice to surrounding landowners, local governments, and other parties in interest. By ensuring such "institutional controls" are maintained and enforced, UECA helps fulfill the dual purposes of such restrictions – the protection of human health and the economically viable reuse of the property in question.

There are many reasons why every state should adopt the Uniform Environmental Covenants Act.

- UECA helps to return previously contaminated property to the stream of commerce, by allowing the owners of that property to engage in responsible risk-based cleanups and then transfer or sell the property subject to state-approved controls on its use.

- UECA gives a broad array of interested parties the ability to enforce the use and activity restrictions contained in an environmental covenant, thereby helping to ensure those controls will remain in place and prevent secondary harms.

- UECA protects valid environmental covenants from being inadvertently extinguished by application of various common law doctrines, adverse possession, tax lien foreclosures, less-restrictive zoning changes, and marketable title statutes.

- UECA requires the state environmental agency to be a signatory to the covenant, thereby ensuring that risk assessments and control mechanisms are based on sound science, adequately protect human health and surrounding properties, and that notice of the covenant and associated controls is provided to affected third parties.

- UECA does not supplant or impose substantive cleanup standards or liability; rather it validates approved site-specific controls resulting from an environmental response project, and makes sure those controls are maintained as long as necessary to meet the objective for which they were approved.

The Uniform Environmental Covenants Act is an important tool in revitalizing inner cities and other areas where vacant and underused properties are preventing vital redevelopment. It was drafted with the participation of state and federal regulators, public and private land owners, banking interests, environmentalists, and land use experts. Its uniform national enactment will provide the owners of contaminated land the confidence to invest in long-term remediation strategies and use controls, while at the same time protecting human health and allowing those

properties to be developed and thus bring economic revitalization to blighted areas and sites.

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Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

A Few Facts About The...

UNIFORM ENVIRONMENTAL COVENANTS ACT

PURPOSE:
This act deals with the future use of contaminated real estate, or brownfields. The act provides clear rules for a perpetual real estate interest – an environmental covenant – to regulate the use of brownfields when real estate is transferred from one owner to another.

ORIGIN:
Completed by the Uniform Law Commissioners in 2003.

STATE ADOPTIONS:

Delaware	Nebraska
Iowa	Nevada
Kentucky	Ohio
Maine	South Dakota
Maryland	West Virginia

2006 INTRODUCTIONS:

Arizona	Pennsylvania
District of Columbia	U.S. Virgin Islands
Georgia	Utah
Hawaii	Virginia
Idaho	Washington
Minnesota	
Mississippi	
Missouri	
New Mexico	

For any further information on the Uniform Environmental Covenants Act, please contact

Michael Kerr, John McCabe or Katie Robinson at 312-915-0195.

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

S.F. No. 2857: A bill for an act relating to high pressure piping; classifying data relating to bioprocess piping and equipment as nonpublic; including bioprocess piping in the definition of high pressure piping; amending Minnesota Statutes 2004, sections 16B.61, subdivisions 2, 3; 326.461, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 13.

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

Page 1, delete lines 9 to 14 and insert:

"(a) For the purpose of this section, "biotechnology process piping system" means piping and equipment utilizing living organisms for medical, research, or pharmaceutical purposes and meeting the most current requirements in the bioprocessing equipment standard adopted by the American Society of Mechanical Engineers and does not include process piping used to make bio-food products or treat waste.

(b) Schematic drawings, structural design, and layout of a biotechnology process piping system submitted by a business to the Department of Labor and Industry or a municipality in support of a building code permit application are nonpublic data."

Page 3, line 30, delete everything after the period

Page 3, delete lines 31 to 35

Page 3, line 36, delete everything before "No"

Page 4, line 3, after the period, insert "Section 13.7911 governs access to bioprocess piping and equipment data."

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

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

A bill for an act

relating to high pressure piping; classifying data relating to bioprocess piping and equipment as nonpublic; including bioprocess piping in the definition of high pressure piping; amending Minnesota Statutes 2004, sections 16B.61, subdivisions 2, 3; 326.461, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 13.

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

Section 1. **[13.7911] BIOPROCESS PIPING AND EQUIPMENT DATA.**

All data regarding the material production processes, including the bioprocess system's structural design and layout, are classified as nonpublic data. Bioprocess piping and equipment are limited to those used in the creation of a product utilizing living organisms for medical, research, or pharmaceutical purposes and meeting the most current requirements in the bioprocessing equipment standard adopted by the American Society of Mechanical Engineers.

Sec. 2. Minnesota Statutes 2004, section 16B.61, subdivision 2, is amended to read:

Subd. 2. **Enforcement by certain bodies.** Under the direction and supervision of the commissioner, the provisions of the code relating to electrical installations shall be enforced by the State Board of Electricity, pursuant to the Minnesota Electrical Act, the provisions relating to plumbing shall be enforced by the commissioner of health, the provisions relating to high pressure steam piping and appurtenances, ammonia piping, and bioprocess piping shall be enforced by the Department of Labor and Industry. Fees for inspections conducted by the State Board of Electricity shall be paid in accordance with the rules of the State Board of Electricity. Under direction of the commissioner of public safety, the state fire marshal shall enforce the Minnesota Uniform Fire Code as provided

in chapter 299F. The commissioner, in consultation with the commissioner of labor and industry, shall adopt amendments to the mechanical code portion of the State Building Code to implement standards for process piping.

Sec. 3. Minnesota Statutes 2004, section 16B.61, subdivision 3, is amended to read:

Subd. 3. **Special requirements.** (a) **Space for commuter vans.** The code must require that any parking ramp or other parking facility constructed in accordance with the code include an appropriate number of spaces suitable for the parking of motor vehicles having a capacity of seven to 16 persons and which are principally used to provide prearranged commuter transportation of employees to or from their place of employment or to or from a transit stop authorized by a local transit authority.

(b) **Smoke detection devices.** The code must require that all dwellings, lodging houses, apartment houses, and hotels as defined in section 299F.362 comply with the provisions of section 299F.362.

(c) **Doors in nursing homes and hospitals.** The State Building Code may not require that each door entering a sleeping or patient's room from a corridor in a nursing home or hospital with an approved complete standard automatic fire extinguishing system be constructed or maintained as self-closing or automatically closing.

(d) **Child care facilities in churches; ground level exit.** A licensed day care center serving fewer than 30 preschool age persons and which is located in a belowground space in a church building is exempt from the State Building Code requirement for a ground level exit when the center has more than two stairways to the ground level and its exit.

(e) **Child care facilities in churches; vertical access.** Until August 1, 1996, an organization providing child care in an existing church building which is exempt from taxation under section 272.02, subdivision 6, shall have five years from the date of initial licensure under chapter 245A to provide interior vertical access, such as an elevator, to persons with disabilities as required by the State Building Code. To obtain the extension, the organization providing child care must secure a $2,500 performance bond with the commissioner of human services to ensure that interior vertical access is achieved by the agreed upon date.

(f) **Family and group family day care.** Until the legislature enacts legislation specifying appropriate standards, the definition of Group R-3 occupancies in the State Building Code applies to family and group family day care homes licensed by the Department of Human Services under Minnesota Rules, chapter 9502.

(g) **Enclosed stairways.** No provision of the code or any appendix chapter of the code may require stairways of existing multiple dwelling buildings of two stories or less to be enclosed.

(h) **Double cylinder dead bolt locks.** No provision of the code or appendix chapter of the code may prohibit double cylinder dead bolt locks in existing single-family homes, townhouses, and first floor duplexes used exclusively as a residential dwelling. Any recommendation or promotion of double cylinder dead bolt locks must include a warning about their potential fire danger and procedures to minimize the danger.

(i) **Relocated residential buildings.** A residential building relocated within or into a political subdivision of the state need not comply with the State Energy Code or section 326.371 provided that, where available, an energy audit is conducted on the relocated building.

(j) **Automatic garage door opening systems.** The code must require all residential buildings as defined in section 325F.82 to comply with the provisions of sections 325F.82 and 325F.83.

(k) **Exit sign illumination.** For a new building on which construction is begun on or after October 1, 1993, or an existing building on which remodeling affecting 50 percent or more of the enclosed space is begun on or after October 1, 1993, the code must prohibit the use of internally illuminated exit signs whose electrical consumption during nonemergency operation exceeds 20 watts of resistive power. All other requirements in the code for exit signs must be complied with.

(l) **Exterior wood decks, patios, and balconies.** The code must permit the decking surface and upper portions of exterior wood decks, patios, and balconies to be constructed of (1) heartwood from species of wood having natural resistance to decay or termites, including redwood and cedars, (2) grades of lumber which contain sapwood from species of wood having natural resistance to decay or termites, including redwood and cedars, or (3) treated wood. The species and grades of wood products used to construct the decking surface and upper portions of exterior decks, patios, and balconies must be made available to the building official on request before final construction approval.

(m) **Bioprocess piping and equipment.** All data regarding the material production processes, including the bioprocess system's structural design and layout, are trade secret information under section 13.37 and nonpublic data under section 13.7911. Bioprocess piping and equipment are limited to those used in the creation of a product utilizing living organisms for medical, research, or pharmaceutical purposes and meeting the most current requirements set forth in the bioprocessing equipment standards adopted by the American Society of Mechanical Engineers. No permit fee for bioprocess piping may be

imposed by municipalities under the State Building Code, except as required under section 326.47, subdivision 1. Permits for bioprocess piping shall be according to section 326.47 administered by the Department of Labor and Industry.

Sec. 4. Minnesota Statutes 2004, section 326.461, subdivision 2, is amended to read:

Subd. 2. **High pressure piping.** "High pressure piping" means all high pressure piping used in the installation of hot water or steam heating boilers, any systems of piping hot water or other medium used for heating that exceed 30 p.s.i. gauge and 250 degrees Fahrenheit, or any system of high pressure steam ~~or~~, ammonia piping, or bioprocess piping, but shall not include any high pressure piping under the direct jurisdiction of the United States.

Senator ..... moves to amend S.F. No. 2857 as follows:

Page 1, delete lines 9 to 14 and insert:

"(a) For the purpose of this section, "biotechnology process piping system" means piping and equipment utilizing living organisms for medical, research, or pharmaceutical purposes and meeting the most current requirements in the bioprocessing equipment standard adopted by the American Society of Mechanical Engineers and does not include process piping used to make bio-food products or treat waste.

(b) Schematic drawings, structural design, and layout of a biotechnology process piping system submitted by a business to the Department of Labor and Industry or a municipality in support of a building code permit application are nonpublic data."

Page 3, line 30, delete everything after the period

Page 3, delete lines 31 to 35

Page 3, line 36, delete everything before "No"

Page 4, line 3, after the period, insert "Section 13.7911 governs access to bioprocess piping and equipment data."

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

S.F. No. 2633: A bill for an act relating to courts; providing for appeal of Fourth Judicial District Family Court referee orders; amending Minnesota Statutes 2004, section 484.65, subdivision 9.

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

Delete everything after the enacting clause and insert:

"Section 1. **[257.026] NOTIFICATION OF RESIDENCE WITH CERTAIN CONVICTED PERSONS.**

A person who is granted or exercises custody of a child or parenting time with a child under this chapter or chapter 518 must notify the child's other parent, if any, the county social services agency, and the court that granted the custody or parenting time, if the person knowingly marries or lives in the same residence with a person who has been convicted of a crime listed in section 518.179, subdivision 2.

Sec. 2. Minnesota Statutes 2004, section 257.55, subdivision 1, is amended to read:

Subdivision 1. **Presumption.** A man is presumed to be the biological father of a child if:

(a) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under section 257.75, subdivision 1a;

(b) Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 280 days after its termination by death, annulment, declaration of invalidity, dissolution or divorce; or

(2) if the attempted marriage is invalid without a court order, the child is born within 280 days after the termination of cohabitation;

(c) After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) he has acknowledged his paternity of the child in writing filed with the state registrar of vital statistics;

(2) with his consent, he is named as the child's father on the child's birth record; or

(3) he is obligated to support the child under a written voluntary promise or by court order;

(d) ~~While the child is under the age of majority, he receives the child into his home~~ During the first two years of the child's life, he resided in the same household with the child for at least 12 months and openly ~~holds~~ held out the child as his ~~biological child~~ own;

(e) He and the child's biological mother acknowledge his paternity of the child in a writing signed by both of them under section 257.34 and filed with the state registrar of vital statistics. If another man is presumed under this paragraph to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted;

(f) ~~Evidence of statistical probability of paternity based on blood or genetic testing establishes the likelihood that he is the father of the child, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater;~~

~~(g)~~ He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man is presumed to be the father under this subdivision;

~~(h)~~ (g) He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man and the child's mother have executed a recognition of parentage in accordance with section 257.75; or

~~(i)~~ (h) He and the child's biological mother executed a recognition of parentage in accordance with section 257.75 when either or both of the signatories were less than 18 years of age.

Sec. 3. Minnesota Statutes 2004, section 257.57, subdivision 2, is amended to read:

Subd. 2. **Actions under other paragraphs of section 257.55, subdivision 1.** The child, the mother, or personal representative of the child, the public authority chargeable by law with the support of the child, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor may bring an action:

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under ~~section~~ sections 257.55, subdivision 1, paragraph (d), (e), ~~(f),~~ (g), or (h), and 257.62, subdivision 5, paragraph (b), or the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, clause (d) ~~of that subdivision~~;

(2) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (e) or (g), only if the action is

brought within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the presumed father is not the father of the child;

(3) for the purpose of declaring the nonexistence of the father and child relationship presumed under section ~~257.55, subdivision 1, paragraph (f)~~ 257.62, subdivision 5, paragraph (b), only if the action is brought within three years after the party bringing the action, or the party's attorney of record, has been provided the blood or genetic test results; or

(4) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.75, subdivision 9, only if the action is brought by the minor signatory within six months after the minor signatory reaches the age of 18. In the case of a recognition of parentage executed by two minor signatories, the action to declare the nonexistence of the father and child relationship must be brought within six months after the youngest signatory reaches the age of 18.

Sec. 4. Minnesota Statutes 2004, section 257.62, subdivision 5, is amended to read:

Subd. 5. **Positive test results.** (a) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that the likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 92 percent or greater, upon motion the court shall order the alleged father to pay temporary child support determined according to chapter 518. The alleged father shall pay the support money to the public authority if the public authority is a party and is providing services to the parties or, if not, into court pursuant to the Rules of Civil Procedure to await the results of the paternity proceedings.

(b) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater, there is an evidentiary presumption that the alleged father is ~~presumed to be~~ the ~~parent~~ biological father and the party opposing the establishment of the alleged father's paternity has the burden of proving by clear and convincing evidence that the alleged father is not the father of the child.

(c) A determination under this subdivision that the alleged father is the biological father does not preclude the adjudication of another man as the legal father under section 257.55, subdivision 2, nor does it allow the donor of genetic material for assisted reproduction for the benefit of a recipient parent, whether sperm or ovum (egg), to claim to be the child's biological or legal parent.

Sec. 5. Minnesota Statutes 2004, section 257C.03, subdivision 7, is amended to read:

Subd. 7. **Interested third party; burden of proof; factors.** (a) To establish that an individual is an interested third party, the individual must:

(1) show by clear and convincing evidence that one of the following factors exist:

(i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;

(ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or

(iii) other extraordinary circumstances; ~~and~~

(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party; and

(3) show by clear and convincing evidence that granting the petition would not violate section 518.179, subdivision 1a.

(b) The following factors must be considered by the court in determining an interested third party's petition:

(1) the amount of involvement the interested third party had with the child during the parent's absence or during the child's lifetime;

(2) the amount of involvement the parent had with the child during the parent's absence;

(3) the presence or involvement of other interested third parties;

(4) the facts and circumstances of the parent's absence;

(5) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(6) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence;

(7) whether a sibling of the child is already in the care of the interested third party; and

(8) the existence of a standby custody designation under chapter 257B.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04.

Sec. 6. Minnesota Statutes 2004, section 259.58, is amended to read:

259.58 COMMUNICATION OR CONTACT AGREEMENTS.

Adoptive parents and a birth relative or foster parents may enter an agreement regarding communication with or contact between an adopted minor, adoptive parents, and a birth relative or foster parents under this section. An agreement may be entered between:

(1) adoptive parents and a birth parent;

(2) adoptive parents and any other birth relative or foster parent with whom the child resided before being adopted; or

(3) adoptive parents and any other birth relative if the child is adopted by a birth relative upon the death of both birth parents.

For purposes of this section, "birth relative" means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a minor adoptee. This relationship may be by blood, adoption, or marriage. For an Indian child, birth relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act, United States Code, title 25, section 1903.

(a) An agreement regarding communication with or contact between minor adoptees, adoptive parents, and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section. An order may be sought at any time before a decree of adoption is granted. The order must be issued within 30 days of being submitted to the court or by the granting of the decree of adoption, whichever is earlier. The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents, a birth relative or foster parent who desires to be a party to the agreement, and, if the child is in the custody of or under the guardianship of an agency, a representative of the agency. A birth parent must approve in writing of an agreement between adoptive parents and any other birth relative or foster parent, unless an action has been filed against the birth parent by a county under chapter 260. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact between the minor adoptee, the adoptive parents, and a birth relative as agreed upon and contained in the proposed order would be in the minor adoptee's best interests. The court shall mail a certified copy of the order to the parties to the agreement or their representatives at the addresses provided by the petitioners.

(b) Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court under this section is not grounds for:

(1) setting aside an adoption decree; or

(2) revocation of a written consent to an adoption after that consent has become irrevocable.

(c) An agreed order entered under this section may be enforced by filing a petition or motion with the family court that includes a certified copy of the order granting the

communication, contact, or visitation, but only if the petition or motion is accompanied by an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification. The prevailing party may be awarded reasonable attorney's fees and costs. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the minor adoptee, and:

(1) the modification is agreed to by the parties to the agreement; or

(2) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

(d) For children under state guardianship when there is a written communication or contact agreement between prospective adoptive parents and birth relatives other than birth parents it must be included in the final adoption decree unless all the parties agree to omit it. If the adoptive parents or birth relatives do not comply with the communication or contact agreement, the court shall determine the terms of the communication and contact agreement.

Sec. 7. Minnesota Statutes 2004, section 484.65, subdivision 9, is amended to read:

Subd. 9. **Referees; ~~review~~ appeal.** All recommended orders and findings of a referee shall be subject to confirmation by said district court judge. ~~Review of any recommended order or finding of a referee by the district court judge may be had by notice served and filed within ten days of effective notice of such recommended order or finding. The notice of review shall specify the grounds for such review and the specific provisions of the recommended findings or orders disputed, and said district court judge, upon receipt of such notice of review, shall set a time and place for such review hearing.~~ Fourth Judicial District Family Court referee orders and decrees may be appealed directly to the Court of Appeals in the same manner as judicial orders and decrees. The time for appealing an appealable referee order runs from service by any party of written notice of the filing of the confirmed order.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. Minnesota Statutes 2004, section 517.05, is amended to read:

517.05 CREDENTIALS OF MINISTER OR MEJ KOOB.

Subdivision 1. **Minister.** Ministers of any religious denomination, before they are authorized to solemnize a marriage, shall file a copy of their credentials of license or ordination with the ~~court administrator of the district court~~ local registrar of a county in this state, who shall record the same and give a certificate thereof. The place where the

credentials are recorded shall be endorsed upon and recorded with each certificate of marriage granted by a minister.

Subd. 2. **Mej Koob.** Before a Mej Koob is authorized to solemnize a marriage, the Mej Koob must file a signed statement with the local registrar in any county in the state indicating the person's intent to solemnize Hmong marriages as provided in section 517.18, subdivision 4a. The local registrar shall record the statement and give the person a certificate indicating the person's authority to solemnize those marriages. The place where the statement is recorded must be endorsed upon and recorded with each certificate of marriage granted by the Mej Koob.

Sec. 9. Minnesota Statutes 2004, section 517.14, is amended to read:

517.14 ILLEGAL MARRIAGE; FALSE CERTIFICATE; PENALTY.

A person who does any of the following is guilty of a misdemeanor:

(1) a person authorized by law to solemnize marriages who knowingly solemnizes a marriage contrary to the provisions of this chapter, or knowing of any legal impediment to the proposed marriage~~, or~~;

(2) a person who willfully makes a false certificate of any marriage or pretended marriage ~~is guilty of a misdemeanor~~; or

(3) a person who knowingly facilitates or assists in arranging the solemnization of a marriage contrary to the provisions of this chapter.

Sec. 10. Minnesota Statutes 2004, section 517.18, is amended to read:

517.18 MARRIAGE SOLEMNIZATION; SPECIAL PROVISIONS.

Subdivision 1. **Friends or Quakers.** ~~All~~ Marriages solemnized among the people called Friends or Quakers, in the form heretofore practiced and in use in their meetings, shall be valid and not affected by any of the foregoing provisions. ~~The clerk of the meeting in which such marriage is solemnized, within one month after any such marriage, shall deliver a certificate of the same to the local registrar of the county where the marriage took place, under penalty of not more than $100. Such certificate shall be filed and recorded by the court administrator under a like penalty. If such marriage does not take place in such meeting, such certificate shall be signed by the parties and at least six witnesses present, and shall be filed and recorded as above provided under a like penalty.~~

Subd. 2. **Baha'i.** Marriages may be solemnized among members of the Baha'i faith by the chair of an incorporated local Spiritual Assembly of the Baha'is, according to the form and usage of such society.

Subd. 3. **Buddhists; Hindus; Muslims.** Marriages may be solemnized among Buddhists, Hindus, or Muslims by the person chosen by a local Buddhist, Hindu, or Muslim association, according to the form and usage of their respective religions.

Subd. 4. **American Indians.** Marriages may be solemnized among American Indians according to the form and usage of their religion by an Indian Mide' or holy person chosen by the parties to the marriage.

Subd. 4a. **Hmong.** Marriages may be solemnized among Hmong by the Mej Koob.

Subd. 5. **Construction of section.** Nothing in subdivisions 2 to ~~4~~ 4a shall be construed to alter the requirements of section 517.01, 517.09 or 517.10.

Subd. 6. **Filing of certificate.** (a) Within five days after a marriage is solemnized under subdivision 1, the clerk of the meeting shall deliver a certificate of the marriage to the local registrar of the county where the marriage took place. If the marriage did not take place at a meeting, the certificate must be signed by the parties and at least six witnesses to the marriage and delivered by one of the parties. Within five days after a marriage is solemnized in a manner specified in subdivisions 2 to 4a, the person who solemnized the marriage must deliver the certificate. The local registrar shall file and record the certificate.

(b) A person who does not deliver, file, or record a certificate as required under this subdivision is subject to a civil penalty of up to $100.

Subd. 7. **Application of other law.** Nothing in this section authorizes the solemnization of a marriage in violation of this chapter or solemnization of a marriage to which both parties do not voluntarily consent.

Sec. 11. Minnesota Statutes 2004, section 518.091, subdivision 1, is amended to read:

Subdivision 1. **Temporary restraining orders.** (a) Every summons must include the notice in this subdivision.

NOTICE OF TEMPORARY RESTRAINING AND ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

UNDER MINNESOTA LAW, SERVICE OF THIS SUMMONS MAKES THE FOLLOWING REQUIREMENTS APPLY TO BOTH PARTIES TO THIS ACTION, UNLESS THEY ARE MODIFIED BY THE COURT OR THE PROCEEDING IS DISMISSED:

(1) NEITHER PARTY MAY DISPOSE OF ANY ASSETS EXCEPT (i) FOR THE NECESSITIES OF LIFE OR FOR THE NECESSARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, (ii) BY AN AGREEMENT IN WRITING, OR (iii) FOR RETAINING COUNSEL TO CARRY ON OR TO CONTEST THIS PROCEEDING;

(2) NEITHER PARTY MAY HARASS THE OTHER PARTY; AND

(3) ALL CURRENTLY AVAILABLE INSURANCE COVERAGE MUST BE MAINTAINED AND CONTINUED WITHOUT CHANGE IN COVERAGE OR BENEFICIARY DESIGNATION.

IF YOU VIOLATE ANY OF THESE PROVISIONS, YOU WILL BE SUBJECT TO SANCTIONS BY THE COURT.

(4) PARTIES TO A MARRIAGE DISSOLUTION PROCEEDING ~~ARE ENCOURAGED TO ATTEMPT ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO MINNESOTA LAW. ALTERNATIVE DISPUTE RESOLUTION INCLUDES MEDIATION, ARBITRATION, AND OTHER PROCESSES AS SET FORTH IN THE DISTRICT COURT RULES~~ SHALL PARTICIPATE IN A MINIMUM OF TWO HOURS OF MEDIATION WITHIN 60 DAYS OF COMMENCEMENT OF A DIVORCE ACTION BY SERVICE OF THIS SUMMONS, UNLESS THE PARTIES FILE A SIGNED MARITAL TERMINATION AGREEMENT WITH THE COURT DURING THAT TIME OR DO NOT HAVE THE MEANS TO DEFRAY THE COST OF THE MEDIATION. YOU MAY CONTACT THE COURT ADMINISTRATOR ABOUT RESOURCES IN YOUR AREA. IF YOU CANNOT PAY FOR MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION, IN SOME COUNTIES, ASSISTANCE MAY BE AVAILABLE TO YOU THROUGH A NONPROFIT PROVIDER OR A COURT PROGRAM. IF YOU ARE A VICTIM OF DOMESTIC ABUSE OR THREATS OF ABUSE AS DEFINED IN MINNESOTA STATUTES, CHAPTER 518B, YOU ARE NOT REQUIRED TO TRY MEDIATION AND YOU WILL NOT BE PENALIZED BY THE COURT IN LATER PROCEEDINGS.

(b) Upon service of the summons, the restraining provisions contained in the notice apply by operation of law upon both parties until modified by further order of the court or dismissal of the proceeding, unless more than one year has passed since the last document was filed with the court.

Sec. 12. Minnesota Statutes 2004, section 518.1705, subdivision 4, is amended to read:

Subd. 4. **Custody designation.** ~~A final judgment and decree that includes a parenting plan using alternate terms to designate decision-making responsibilities or allocation of residential time between the parents must designate whether the parents have joint legal custody or joint physical custody or which parent has sole legal custody or sole physical custody, or both. This designation is solely for enforcement of the final judgment and decree where this designation is required for that enforcement and has no effect under the laws of this state, any other state, or another country that do not require this designation.~~ A parenting plan is not required to designate sole or joint legal or physical custody. If the parenting plan substitutes other terms for legal and physical custody or

does not make a designation and a designation of legal and physical custody is necessary for enforcement of the judgment and decree in another jurisdiction, it must be considered solely for that purpose that the parents have joint legal and joint physical custody.

Sec. 13. Minnesota Statutes 2004, section 518.1705, subdivision 7, is amended to read:

Subd. 7. **Moving the child to another state.** Parents may agree~~, but the court must not require, that in a parenting plan the factors in section 518.17 or 257.025, as applicable,~~ upon the legal standard that will govern a decision concerning removal of a child's residence from this state, provided that:

(1) both parents were represented by counsel when the parenting plan was approved; or

(2) the court found the parents were fully informed, the agreement was voluntary, and the parents were aware of its implications.

Sec. 14. Minnesota Statutes 2004, section 518.175, subdivision 3, is amended to read:

Subd. 3. **Move to another state.** (a) The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the other parent by the decree, the court shall not permit the child's residence to be moved to another state.

(b) The court shall apply a best interests standard when considering the request of the parent with whom the child resides to move the child's residence to another state. The factors the court must consider in determining the child's best interests include, but are not limited to:

(1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;

(2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;

(3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties;

(4) the child's preference, taking into consideration the age and maturity of the child;

(5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;

(6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;

(7) the reasons of each person for seeking or opposing the relocation; and

(8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

(c) The burden of proof is upon the parent requesting to move the residence of the child to another state, except that if the court finds that the person requesting permission to move has been a victim of domestic abuse by the other parent, the burden of proof is upon the parent opposing the move. The court must consider all of the factors in this subdivision in determining the best interests of the child.

Sec. 15. Minnesota Statutes 2004, section 518.179, is amended by adding a subdivision to read:

Subd. 1a **Custody of nonbiological child.** A person convicted of a crime described in subdivision 2 may not be considered for custody of a child unless the child is the person's child by birth or adoption.

Sec. 16. Minnesota Statutes 2004, section 518.18, is amended to read:

518.18 MODIFICATION OF ORDER.

(a) Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan may be made earlier than one year after the date of the entry of a decree of dissolution or legal separation containing a provision dealing with custody, except in accordance with paragraph (c).

(b) If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within two years after disposition of the prior motion on its merits, except in accordance with paragraph (c).

(c) The time limitations prescribed in paragraphs (a) and (b) shall not prohibit a motion to modify a custody order or parenting plan if the court finds that there is persistent and willful denial or interference with parenting time, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order or a parenting plan provision which specifies the child's

primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custody arrangement or the parenting plan provision specifying the child's primary residence that was established by the prior order unless:

(i) the court finds that a change in the custody arrangement or primary residence is in the best interests of the child and the parties previously agreed, in a writing approved by a court, to apply the best interests standard in section 518.17 or 257.025, as applicable; and, with respect to agreements approved by a court on or after April 28, 2000, both parties were represented by counsel when the agreement was approved or the court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications;

(ii) both parties agree to the modification;

(iii) the child has been integrated into the family of the petitioner with the consent of the other party; ~~or~~

(iv) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(v) the court has denied a request of the primary custodial parent to move the residence of the child to another state, and the primary custodial parent has relocated to another state despite the court's order.

In addition, a court may modify a custody order or parenting plan under section 631.52.

(e) In deciding whether to modify a prior joint custody order, the court shall apply the standards set forth in paragraph (d) unless: (1) the parties agree in writing to the application of a different standard, or (2) the party seeking the modification is asking the court for permission to move the residence of the child to another state.

(f) If a parent has been granted sole physical custody of a minor and the child subsequently lives with the other parent, and temporary sole physical custody has been approved by the court or by a court-appointed referee, the court may suspend the obligor's child support obligation pending the final custody determination. The court's order denying the suspension of child support must include a written explanation of the reasons why continuation of the child support obligation would be in the best interests of the child.

Sec. 17. Minnesota Statutes 2004, section 518.191, subdivision 2, is amended to read:

Subd. 2. **Required information.** A summary real estate disposition judgment must contain the following information: (1) the full caption and file number of the case and the title "Summary Real Estate Disposition Judgment"; (2) the dates of the parties' marriage and of the entry of the judgment and decree of dissolution; (3) the names of the parties' attorneys or if either or both appeared pro se; (4) the name of the judge and referee, if any, who signed the order for judgment and decree; (5) whether the judgment and decree resulted from a stipulation, a default, or a trial and the appearances at the default or trial; (6) if the judgment and decree resulted from a stipulation, whether disposition of the property was stipulated to by legal description; (7) if the judgment and decree resulted from a default, whether the petition contained the legal description of the property and disposition was made in accordance with the request for relief, and service of the summons and petition was made personally pursuant to the Rules of Civil Procedure, Rule 4.03(a), or section 543.19; (8) whether either party changed the party's name through the judgment and decree; ~~(7)~~ (9) the legal description of each parcel of real estate; ~~(8)~~ (10) the name or names of the persons awarded an interest in each parcel of real estate and a description of the interest awarded; ~~(9)~~ (11) liens, mortgages, encumbrances, or other interests in the real estate described in the judgment and decree; and ~~(10)~~ (12) triggering or contingent events set forth in the judgment and decree affecting the disposition of each parcel of real estate.

Sec. 18. Minnesota Statutes 2004, section 518.58, subdivision 4, is amended to read:

Subd. 4. **Pension plans.** (a) The division of marital property that represents pension plan benefits or rights in the form of future pension plan payments:

(1) is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;

(2) is not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;

(3) is not payable in a lump sum amount from defined benefit pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

(4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and

(5) in the case of defined benefit public pension plan benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

(b) The individual retirement account plans established under chapter 354B may provide in its plan document, if published and made generally available, for an alternative marital property division or distribution of individual retirement account plan assets. If an alternative division or distribution procedure is provided, it applies in place of paragraph (a), clause (5).

Sec. 19. Minnesota Statutes 2005 Supplement, section 626.556, subdivision 2, is amended to read:

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in paragraph (d);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay,

which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; ~~or~~

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture; or

(10) allowing a child to enter into a marriage in violation of section 517.02, or otherwise allowing solemnization of a marriage in accordance with the form and usage of a particular religion or culture in violation of these provisions, regardless of whether the marriage is solemnized in a manner authorized under chapter 517.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

(6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B; or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed

personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

(k) "Commissioner" means the commissioner of human services.

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

(o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

Sec. 20. Minnesota Statutes 2005 Supplement, section 626.556, subdivision 3, is amended to read:

Subd. 3. **Persons mandated to report.** (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency

responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; ~~or~~

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c); or

(3) a person who has authority to solemnize a marriage under chapter 517, who has received information regarding neglect, as defined in subdivision 2, paragraph (f), clause (10), while engaged in the performance of that function.

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or

chapter 245B; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this subdivision, "immediately" means as soon as possible but in no event longer than 24 hours."

Amend the title accordingly

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

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

SENATE
STATE OF MINNESOTA
EIGHTY-FOURTH LEGISLATURE

S.F. No. 2633

(SENATE AUTHORS: REST, Skoglund, Ranum and Hann; Companion to H.F. No. 2656)

DATE	D-PG	OFFICIAL STATUS
03/01/2006	3808	Introduction and first reading
03/01/2006		Referred to Judiciary
03/08/2006		Committee report: To pass
03/08/2006		Second reading

A bill for an act

relating to courts; providing for appeal of Fourth Judicial District Family Court referee orders; amending Minnesota Statutes 2004, section 484.65, subdivision 9.

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

Section 1. Minnesota Statutes 2004, section 484.65, subdivision 9, is amended to read:

Subd. 9. **Referees; ~~review~~ appeal.** All recommended orders and findings of a referee shall be subject to confirmation by said district court judge. ~~Review of any recommended order or finding of a referee by the district court judge may be had by notice served and filed within ten days of effective notice of such recommended order or finding. The notice of review shall specify the grounds for such review and the specific provisions of the recommended findings or orders disputed, and said district court judge, upon receipt of such notice of review, shall set a time and place for such review hearing.~~ Fourth Judicial District Family Court referee orders and decrees may be appealed directly to the Court of Appeals in the same manner as judicial orders and decrees. The time for appealing an appealable referee order runs from service by any party of written notice of the filing of the confirmed order.

EFFECTIVE DATE. This section is effective the day following final enactment.

To: Senator Betzold, Chair

Committee on Judiciary

Senator Neuville,

Chair of the Subcommittee on Family Law, to which was referred

S.F. No. 3386: A bill for an act relating to family law; clarifying and modifying provisions dealing with the establishment and enforcement of child support and parenting time; amending Minnesota Statutes 2004, sections 518.175, subdivision 1; 518.5513, subdivision 3; Laws 2005, chapter 164, sections 3, subdivision 6; 4; 5; 8, subdivision 5b; 10, subdivision 2; 11, subdivision 7; 14; 15; 16; 17, subdivisions 1, 6; 18, subdivision 2; 20; 22, subdivision 4; 23, subdivisions 1, 2, 4; 24; 25; 26, subdivision 2, as amended; 31; proposing coding for new law in Minnesota Statutes, chapter 518.

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

Delete everything after the enacting clause and insert:

"Section 1. **[257.026] [NOTIFICATION OF RESIDENCE WITH CERTAIN CONVICTED PERSONS.]**

A person who is granted or exercises custody of a child or parenting time with a child under this chapter or chapter 518 must notify the child's other parent, if any, the county social services agency, and the court that granted the custody or parenting time, if the person knowingly marries or lives in the same residence with a person who has been convicted of a crime listed in section 518.179, subdivision 2.

Sec. 2. Minnesota Statutes 2004, section 257.55, subdivision 1, is amended to read:

Subdivision 1. **Presumption.** A man is presumed to be the biological father of a child if:

(a) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under section 257.75, subdivision 1a;

(b) Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 280 days after its termination by death, annulment, declaration of invalidity, dissolution or divorce; or

(2) if the attempted marriage is invalid without a court order, the child is born within 280 days after the termination of cohabitation;

(c) After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) he has acknowledged his paternity of the child in writing filed with the state registrar of vital statistics;

(2) with his consent, he is named as the child's father on the child's birth record; or

(3) he is obligated to support the child under a written voluntary promise or by court order;

(d) ~~While the child is under the age of majority, he receives the child into his home~~ During the first two years of the child's life, he resided in the same household with the child for at least 12 months and openly ~~holds~~ held out the child as his ~~biological child~~ own;

(e) He and the child's biological mother acknowledge his paternity of the child in a writing signed by both of them under section 257.34 and filed with the state registrar of vital statistics. If another man is presumed under this paragraph to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted;

(f) ~~Evidence of statistical probability of paternity based on blood or genetic testing establishes the likelihood that he is the father of the child, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater;~~

~~(g)~~ He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man is presumed to be the father under this subdivision;

~~(h)~~ (g) He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man and the child's mother have executed a recognition of parentage in accordance with section 257.75; or

~~(i)~~ (h) He and the child's biological mother executed a recognition of parentage in accordance with section 257.75 when either or both of the signatories were less than 18 years of age.

Sec. 3. Minnesota Statutes 2004, section 257.57, subdivision 2, is amended to read:

Subd. 2. **Actions under other paragraphs of section 257.55, subdivision 1.** The child, the mother, or personal representative of the child, the public authority chargeable by law with the support of the child, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor may bring an action:

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under ~~section~~ sections 257.55, subdivision 1, paragraph (d), (e), ~~(f),~~ (g), or (h), and 257.62, subdivision 5, paragraph (b), or the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, clause (d) ~~of that subdivision~~;

(2) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (e) or (g), only if the action is brought within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the presumed father is not the father of the child;

(3) for the purpose of declaring the nonexistence of the father and child relationship presumed under section ~~257.55, subdivision 1, paragraph (f)~~ 257.62, subdivision 5, paragraph (b), only if the action is brought within three years after the party bringing the action, or the party's attorney of record, has been provided the blood or genetic test results; or

(4) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.75, subdivision 9, only if the action is brought by the minor signatory within six months after the minor signatory reaches the age of 18. In the case of a recognition of parentage executed by two minor signatories, the action to declare the nonexistence of the father and child relationship must be brought within six months after the youngest signatory reaches the age of 18.

Sec. 4. Minnesota Statutes 2004, section 257.62, subdivision 5, is amended to read:

Subd. 5. **Positive test results.** (a) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that the likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 92 percent or greater, upon motion the court shall order the alleged father to pay temporary child support determined according to chapter 518. The alleged father shall pay the support money to the public authority if the public authority is a party and is providing services to the parties or, if not, into court pursuant to the Rules of Civil Procedure to await the results of the paternity proceedings.

(b) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater, there is an evidentiary presumption that the alleged father is ~~presumed to be the parent~~ biological father and the party opposing the establishment of the alleged father's paternity has the burden of proving by clear and convincing evidence that the alleged father is not the father of the child.

(c) A determination under this subdivision that the alleged father is the biological father does not preclude the adjudication of another man as the legal father under section 257.55, subdivision 2, nor does it allow the donor of genetic material for assisted reproduction for the benefit of a recipient parent, whether sperm or ovum (egg), to claim to be the child's biological or legal parent.

Sec. 5. Minnesota Statutes 2004, section 257C.03, subdivision 7, is amended to read:

Subd. 7. **Interested third party; burden of proof; factors.** (a) To establish that an individual is an interested third party, the individual must:

(1) show by clear and convincing evidence that one of the following factors exist:

(i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;

(ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or

(iii) other extraordinary circumstances; ~~and~~

(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party; and

(3) show by clear and convincing evidence that granting the petition would not violate section 518.179, subdivision 1a.

(b) The following factors must be considered by the court in determining an interested third party's petition:

(1) the amount of involvement the interested third party had with the child during the parent's absence or during the child's lifetime;

(2) the amount of involvement the parent had with the child during the parent's absence;

(3) the presence or involvement of other interested third parties;

(4) the facts and circumstances of the parent's absence;

(5) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(6) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence;

(7) whether a sibling of the child is already in the care of the interested third party; and

(8) the existence of a standby custody designation under chapter 257B.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04.

Sec. 6. Minnesota Statutes 2004, section 259.58, is amended to read:

259.58 COMMUNICATION OR CONTACT AGREEMENTS.

Adoptive parents and a birth relative or foster parents may enter an agreement regarding communication with or contact between an adopted minor, adoptive parents, and a birth relative or foster parents under this section. An agreement may be entered between:

(1) adoptive parents and a birth parent;

(2) adoptive parents and any other birth relative or foster parent with whom the child resided before being adopted; or

(3) adoptive parents and any other birth relative if the child is adopted by a birth relative upon the death of both birth parents.

For purposes of this section, "birth relative" means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a minor adoptee. This relationship may be by blood, adoption, or marriage. For an Indian child, birth relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act, United States Code, title 25, section 1903.

(a) An agreement regarding communication with or contact between minor adoptees, adoptive parents, and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section. An order may be sought at any time before a decree of adoption is granted. The order must be issued within 30 days of being submitted to the court or by the granting of the decree of adoption, whichever is earlier. The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents, a birth relative or foster parent who desires to be a party to the agreement, and, if the child is in the custody of or under the guardianship of an agency, a representative of the agency. A birth parent must approve in writing of an agreement between adoptive parents and any other birth relative or foster parent, unless an action has been filed against the birth parent by a county under chapter 260. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact between the minor adoptee, the adoptive parents, and a birth relative as agreed upon and contained in the proposed order would be in the minor adoptee's best interests. The court shall mail a certified copy of the order to the parties to the agreement or their representatives at the addresses provided by the petitioners.

(b) Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court under this section is not grounds for:

(1) setting aside an adoption decree; or

(2) revocation of a written consent to an adoption after that consent has become irrevocable.

(c) An agreed order entered under this section may be enforced by filing a petition or motion with the family court that includes a certified copy of the order granting the communication, contact, or visitation, but only if the petition or motion is accompanied by an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification. The prevailing party may be awarded reasonable attorney's fees and costs. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the minor adoptee, and:

(1) the modification is agreed to by the parties to the agreement; or

(2) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

(d) For children under state guardianship when there is a written communication or contact agreement between prospective adoptive parents and birth relatives other than birth parents it must be included in the final adoption decree unless all the parties agree to omit it. If the adoptive parents or birth relatives do not comply with the communication or contact agreement, the court shall determine the terms of the communication and contact agreement.

Sec. 7. Minnesota Statutes 2004, section 517.05, is amended to read:

517.05 CREDENTIALS OF MINISTER OR MEJ KOOB.

Subdivision 1. **Minister.** Ministers of any religious denomination, before they are authorized to solemnize a marriage, shall file a copy of their credentials of license or ordination with the ~~court administrator of the district court~~ local registrar of a county in this state, who shall record the same and give a certificate thereof. The place where the credentials are recorded shall be endorsed upon and recorded with each certificate of marriage granted by a minister.

Subd. 2. **Mej Koob.** Before a Mej Koob is authorized to solemnize a marriage, the Mej Koob must file a signed statement with the local registrar in any county in the state indicating the person's intent to solemnize Hmong marriages as provided in section 517.18, subdivision 4a. The local registrar shall record the statement and give the person a certificate indicating the person's authority to solemnize those marriages. The place where the statement is recorded must be endorsed upon and recorded with each certificate of marriage granted by the Mej Koob.

Sec. 8. Minnesota Statutes 2004, section 517.14, is amended to read:

517.14 ILLEGAL MARRIAGE; FALSE CERTIFICATE; PENALTY.

A person who does any of the following is guilty of a misdemeanor:

(1) a person authorized by law to solemnize marriages who knowingly solemnizes a marriage contrary to the provisions of this chapter, or knowing of any legal impediment to the proposed marriage~~, or~~;

(2) a person who willfully makes a false certificate of any marriage or pretended marriage ~~is guilty of a misdemeanor~~; or

(3) a person who knowingly facilitates or assists in arranging the solemnization of a marriage contrary to the provisions of this chapter.

Sec. 9. Minnesota Statutes 2004, section 517.18, is amended to read:

517.18 MARRIAGE SOLEMNIZATION; SPECIAL PROVISIONS.

Subdivision 1. **Friends or Quakers.** ~~All~~ Marriages solemnized among the people called Friends or Quakers, in the form heretofore practiced and in use in their meetings, shall be valid and not affected by any of the foregoing provisions. ~~The clerk of the meeting in which such marriage is solemnized, within one month after any such marriage, shall deliver a certificate of the same to the local registrar of the county where the marriage took place, under penalty of not more than $100. Such certificate shall be filed and recorded by the court administrator under a like penalty. If such marriage does not take place in such meeting, such certificate shall be signed by the parties and at least six witnesses present, and shall be filed and recorded as above provided under a like penalty.~~

Subd. 2. **Baha'i.** Marriages may be solemnized among members of the Baha'i faith by the chair of an incorporated local Spiritual Assembly of the Baha'is, according to the form and usage of such society.

Subd. 3. **Buddhists; Hindus; Muslims.** Marriages may be solemnized among Buddhists, Hindus, or Muslims by the person chosen by a local Buddhist, Hindu, or Muslim association, according to the form and usage of their respective religions.

Subd. 4. **American Indians.** Marriages may be solemnized among American Indians according to the form and usage of their religion by an Indian Mide' or holy person chosen by the parties to the marriage.

Subd. 4a. **Hmong.** Marriages may be solemnized among Hmong by the Mej Koob.

Subd. 5. **Construction of section.** Nothing in subdivisions 2 to ~~4~~ 4a shall be construed to alter the requirements of section 517.01, 517.09 or 517.10.

Subd. 6. **Filing of certificate.** (a) Within five days after a marriage is solemnized under subdivision 1, the clerk of the meeting shall deliver a certificate of the marriage to

the local registrar of the county where the marriage took place. If the marriage did not take place at a meeting, the certificate must be signed by the parties and at least six witnesses to the marriage and delivered by one of the parties. Within five days after a marriage is solemnized in a manner specified in subdivisions 2 to 4a, the person who solemnized the marriage must deliver the certificate. The local registrar shall file and record the certificate.

(b) A person who does not deliver, file, or record a certificate as required under this subdivision is subject to a civil penalty of up to $100.

Subd. 7. **Application of other law.** Nothing in this section authorizes the solemnization of a marriage in violation of this chapter or solemnization of a marriage to which both parties do not voluntarily consent.

Sec. 10. Minnesota Statutes 2004, section 518.091, subdivision 1, is amended to read:

Subdivision 1. **Temporary restraining orders.** (a) Every summons must include the notice in this subdivision.

NOTICE OF TEMPORARY RESTRAINING AND ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

UNDER MINNESOTA LAW, SERVICE OF THIS SUMMONS MAKES THE FOLLOWING REQUIREMENTS APPLY TO BOTH PARTIES TO THIS ACTION, UNLESS THEY ARE MODIFIED BY THE COURT OR THE PROCEEDING IS DISMISSED:

(1) NEITHER PARTY MAY DISPOSE OF ANY ASSETS EXCEPT (i) FOR THE NECESSITIES OF LIFE OR FOR THE NECESSARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, (ii) BY AN AGREEMENT IN WRITING, OR (iii) FOR RETAINING COUNSEL TO CARRY ON OR TO CONTEST THIS PROCEEDING;

(2) NEITHER PARTY MAY HARASS THE OTHER PARTY; AND

(3) ALL CURRENTLY AVAILABLE INSURANCE COVERAGE MUST BE MAINTAINED AND CONTINUED WITHOUT CHANGE IN COVERAGE OR BENEFICIARY DESIGNATION.

IF YOU VIOLATE ANY OF THESE PROVISIONS, YOU WILL BE SUBJECT TO SANCTIONS BY THE COURT.

(4) PARTIES TO A MARRIAGE DISSOLUTION PROCEEDING ~~ARE ENCOURAGED TO ATTEMPT ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO MINNESOTA LAW. ALTERNATIVE DISPUTE RESOLUTION INCLUDES MEDIATION, ARBITRATION, AND OTHER PROCESSES AS SET FORTH IN THE DISTRICT COURT RULES~~ SHALL PARTICIPATE IN A MINIMUM OF TWO HOURS OF MEDIATION WITHIN 60 DAYS OF COMMENCEMENT OF A DIVORCE ACTION BY SERVICE OF THIS SUMMONS, UNLESS THE PARTIES

FILE A SIGNED MARITAL TERMINATION AGREEMENT WITH THE COURT DURING THAT TIME OR DO NOT HAVE THE MEANS TO DEFRAY THE COST OF THE MEDIATION . YOU MAY CONTACT THE COURT ADMINISTRATOR ABOUT RESOURCES IN YOUR AREA. IF YOU CANNOT PAY FOR MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION, IN SOME COUNTIES, ASSISTANCE MAY BE AVAILABLE TO YOU THROUGH A NONPROFIT PROVIDER OR A COURT PROGRAM. IF YOU ARE A VICTIM OF DOMESTIC ABUSE OR THREATS OF ABUSE AS DEFINED IN MINNESOTA STATUTES, CHAPTER 518B, YOU ARE NOT REQUIRED TO TRY MEDIATION AND YOU WILL NOT BE PENALIZED BY THE COURT IN LATER PROCEEDINGS.

(b) Upon service of the summons, the restraining provisions contained in the notice apply by operation of law upon both parties until modified by further order of the court or dismissal of the proceeding, unless more than one year has passed since the last document was filed with the court.

Sec. 11. Minnesota Statutes 2004, section 518.1705, subdivision 4, is amended to read:

Subd. 4. **Custody designation.** ~~A final judgment and decree that includes a parenting plan using alternate terms to designate decision-making responsibilities or allocation of residential time between the parents must designate whether the parents have joint legal custody or joint physical custody or which parent has sole legal custody or sole physical custody, or both. This designation is solely for enforcement of the final judgment and decree where this designation is required for that enforcement and has no effect under the laws of this state, any other state, or another country that do not require this designation.~~ A parenting plan is not required to designate sole or joint legal or physical custody. If the parenting plan substitutes other terms for legal and physical custody or does not make a designation and a designation of legal and physical custody is necessary for enforcement of the judgment and decree in another jurisdiction, it must be considered solely for that purpose that the parents have joint legal and joint physical custody.

Sec. 12. Minnesota Statutes 2004, section 518.1705, subdivision 7, is amended to read:

Subd. 7. **Moving the child to another state.** Parents may agree~~, but the court must not require, that in a parenting plan the factors in section 518.17 or 257.025, as applicable,~~ upon the legal standard that will govern a decision concerning removal of a child's residence from this state, provided that:

(1) both parents were represented by counsel when the parenting plan was approved; or

(2) the court found the parents were fully informed, the agreement was voluntary, and the parents were aware of its implications.

Sec. 13. Minnesota Statutes 2004, section 518.175, subdivision 3, is amended to read:

Subd. 3. **Move to another state.** (a) The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the other parent by the decree, the court shall not permit the child's residence to be moved to another state.

(b) The court shall apply a best interests standard when considering the request of the parent with whom the child resides to move the child's residence to another state. The factors the court must consider in determining the child's best interests include, but are not limited to:

(1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;

(2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;

(3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties;

(4) the child's preference, taking into consideration the age and maturity of the child;

(5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;

(6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;

(7) the reasons of each person for seeking or opposing the relocation; and

(8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

(c) The burden of proof is upon the parent requesting to move the residence of the child to another state, except that if the court finds that the person requesting permission to move has been a victim of domestic abuse by the other parent, the burden of proof is

upon the parent opposing the move. The court must consider all of the factors in this subdivision in determining the best interests of the child.

Sec. 14. Minnesota Statutes 2004, section 518.179, is amended by adding a subdivision to read:

Subd. 1a **Custody of nonbiological child.** A person convicted of a crime described in subdivision 2 may not be considered for custody of a child unless the child is the person's child by birth or adoption.

Sec. 15. Minnesota Statutes 2004, section 518.18, is amended to read:

518.18 MODIFICATION OF ORDER.

(a) Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan may be made earlier than one year after the date of the entry of a decree of dissolution or legal separation containing a provision dealing with custody, except in accordance with paragraph (c).

(b) If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within two years after disposition of the prior motion on its merits, except in accordance with paragraph (c).

(c) The time limitations prescribed in paragraphs (a) and (b) shall not prohibit a motion to modify a custody order or parenting plan if the court finds that there is persistent and willful denial or interference with parenting time, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order or a parenting plan provision which specifies the child's primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custody arrangement or the parenting plan provision specifying the child's primary residence that was established by the prior order unless:

(i) the court finds that a change in the custody arrangement or primary residence is in the best interests of the child and the parties previously agreed, in a writing approved by a court, to apply the best interests standard in section 518.17 or 257.025, as applicable; and, with respect to agreements approved by a court on or after April 28, 2000, both parties were represented by counsel when the agreement was approved or the court found the

parties were fully informed, the agreement was voluntary, and the parties were aware of its implications;

(ii) both parties agree to the modification;

(iii) the child has been integrated into the family of the petitioner with the consent of the other party; ~~or~~

(iv) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(v) the court has denied a request of the primary custodial parent to move the residence of the child to another state, and the primary custodial parent has relocated to another state despite the court's order.

In addition, a court may modify a custody order or parenting plan under section 631.52.

(e) In deciding whether to modify a prior joint custody order, the court shall apply the standards set forth in paragraph (d) unless: (1) the parties agree in writing to the application of a different standard, or (2) the party seeking the modification is asking the court for permission to move the residence of the child to another state.

(f) If a parent has been granted sole physical custody of a minor and the child subsequently lives with the other parent, and temporary sole physical custody has been approved by the court or by a court-appointed referee, the court may suspend the obligor's child support obligation pending the final custody determination. The court's order denying the suspension of child support must include a written explanation of the reasons why continuation of the child support obligation would be in the best interests of the child.

Sec. 16. Minnesota Statutes 2004, section 518.191, subdivision 2, is amended to read:

Subd. 2. **Required information.** A summary real estate disposition judgment must contain the following information: (1) the full caption and file number of the case and the title "Summary Real Estate Disposition Judgment"; (2) the dates of the parties' marriage and of the entry of the judgment and decree of dissolution; (3) the names of the parties' attorneys or if either or both appeared pro se; (4) the name of the judge and referee, if any, who signed the order for judgment and decree; (5) whether the judgment and decree resulted from a stipulation, a default, or a trial and the appearances at the default or trial; (6) if the judgment and decree resulted from a stipulation, whether disposition of the property was stipulated to by legal description; (7) if the judgment and decree resulted from a default, whether the petition contained the legal description of the property and disposition was made in accordance with the request for relief, and service of the summons and petition was made personally pursuant to the Rules of Civil Procedure, Rule 4.03(a),

or section 543.19; (8) whether either party changed the party's name through the judgment and decree; ~~(7)~~ (9) the legal description of each parcel of real estate; ~~(8)~~ (10) the name or names of the persons awarded an interest in each parcel of real estate and a description of the interest awarded; ~~(9)~~ (11) liens, mortgages, encumbrances, or other interests in the real estate described in the judgment and decree; and ~~(10)~~ (12) triggering or contingent events set forth in the judgment and decree affecting the disposition of each parcel of real estate.

Sec. 17. Minnesota Statutes 2004, section 518.58, subdivision 4, is amended to read:

Subd. 4. **Pension plans.** (a) The division of marital property that represents pension plan benefits or rights in the form of future pension plan payments:

(1) is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;

(2) is not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;

(3) is not payable in a lump sum amount from defined benefit pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

(4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and

(5) in the case of defined benefit public pension plan benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

(b) The individual retirement account plans established under chapter 354B may provide in its plan document, if published and made generally available, for an alternative marital property division or distribution of individual retirement account plan assets. If an alternative division or distribution procedure is provided, it applies in place of paragraph (a), clause (5).

Sec. 18. Minnesota Statutes 2005 Supplement, section 626.556, subdivision 2, is amended to read:

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family

assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in paragraph (d);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of

disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; ~~or~~

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture; or

(10) allowing a child to enter into a marriage in violation of section 517.02, or otherwise allowing solemnization of a marriage in accordance with the form and usage of a particular religion or culture in violation of these provisions, regardless of whether the marriage is solemnized in a manner authorized under chapter 517.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

(6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B; or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

(k) "Commissioner" means the commissioner of human services.

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened

injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

(o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

Sec. 19. Minnesota Statutes 2005 Supplement, section 626.556, subdivision 3, is amended to read:

Subd. 3. **Persons mandated to report.** (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; ~~or~~

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c); or

(3) a person who has authority to solemnize a marriage under chapter 517, who has received information regarding neglect, as defined in subdivision 2, paragraph (f), clause (10), while engaged in the performance of that function.

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise

summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this subdivision, "immediately" means as soon as possible but in no event longer than 24 hours."

Amend the title accordingly

And when so amended that the bill be recommended to pass and be referred to the full committee.

.....
(Subcommittee Chair)

March 21, 2006 .....
(Date of Subcommittee action)

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

S.F. No. 3199: A bill for an act relating to family law; changing certain child support and maintenance provisions;amending Minnesota Statutes 2004, section 518.551, subdivision 6, by adding a subdivision; Laws 2005, chapter 164, sections 4; 5, subdivisions 4a, 8, 15, 18; 8; 10; 14; 15; 16; 18; 20; 21; 22, subdivisions 2, 4, 16, 17, 18; 24; 25; 31; 32; repealing Minnesota Statutes 2004, section 518.54, subdivision 2; Minnesota Statutes 2005 Supplement, section 518.54, subdivision 4a; Laws 2005, chapter 164, section 12.

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

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 518.175, subdivision 1, is amended to read:

Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.

If the court finds, after a hearing, that parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the parent prior to the commencement of the proceeding.

A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of parenting time.

(b) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with parenting time.

(c) Upon request of either party, to the extent practicable an order for parenting time must include a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, unless parenting time is restricted, denied, or reserved.

(d) The court administrator shall provide a form for a pro se motion regarding parenting time disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the parenting time expeditor process under section 518.1751. The form may not include a request for a change of custody. The court shall provide instructions on serving and filing the motion.

(e) In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child. For purposes of

this paragraph, the percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent or by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Sec. 2. Minnesota Statutes 2004, section 518.551, is amended by adding a subdivision to read:

Subd. 1a. **Scope; payment to public authority.** (a) This section applies to all proceedings involving a support order, including, but not limited to, a support order establishing an order for past support or reimbursement of public assistance.

(b) The court shall direct that all payments ordered for maintenance or support be made to the public authority responsible for child support enforcement so long as the obligee is receiving or has applied for public assistance, or has applied for child support or maintenance collection services. Public authorities responsible for child support enforcement may act on behalf of other public authorities responsible for child support enforcement, including the authority to represent the legal interests of or execute documents on behalf of the other public authority in connection with the establishment, enforcement, and collection of child support, maintenance, or medical support, and collection on judgments.

(c) Payments made to the public authority other than payments under section 518.6111 must be credited as of the date the payment is received by the central collections unit.

(d) Monthly amounts received by the public agency responsible for child support enforcement from the obligor that are greater than the monthly amount of public assistance granted to the obligee must be remitted to the obligee.

Sec. 3. Minnesota Statutes 2004, section 518.551, subdivision 6, is amended to read:

Subd. 6. **Failure of notice.** If the court in a dissolution, legal separation or determination of parentage proceeding, finds before issuing the order for judgment and decree, that notification has not been given to the public authority, the court shall set child support ~~according to the guidelines in subdivision 5~~ as provided in Laws 2005, chapter 164, section 26. In those proceedings in which no notification has been made pursuant to this section and in which the public authority determines that the judgment is lower than the child support required by the guidelines in subdivision 5, it shall move the court for a redetermination of the support payments ordered so that the support payments comply with the guidelines.

Sec. 4. Minnesota Statutes 2004, section 518.5513, subdivision 3, is amended to read:

Subd. 3. **Contents of pleadings.** (a) In cases involving establishment or modification of a child support order, the initiating party shall include the following information, if known, in the pleadings:

(1) names, addresses, and dates of birth of the parties;

(2) Social Security numbers of the parties and the minor children of the parties, which information shall be considered private information and shall be available only to the parties, the court, and the public authority;

(3) other support obligations of the obligor;

(4) names and addresses of the parties' employers;

(5) ~~net~~ gross income of the parties as ~~defined~~ calculated in section ~~518.551, subdivision 5, with the authorized deductions itemized~~ 518.7123;

(6) amounts and sources of any other earnings and income of the parties;

(7) health insurance coverage of parties;

(8) types and amounts of public assistance received by the parties, including Minnesota family investment plan, child care assistance, medical assistance, MinnesotaCare, title IV-E foster care, or other form of assistance as defined in section 256.741, subdivision 1; and

(9) any other information relevant to the ~~determination~~ computation of the child ~~or medical~~ support obligation under section ~~518.171 or 518.551, subdivision 5~~ 518.713.

(b) For all matters scheduled in the expedited process, whether or not initiated by the public authority, the nonattorney employee of the public authority shall file with the court and serve on the parties the following information:

(1) information pertaining to the income of the parties available to the public authority from the Department of Employment and Economic Development;

(2) a statement of the monthly amount of child support, medical support, child care, and arrears currently being charged the obligor on Minnesota IV-D cases;

(3) a statement of the types and amount of any public assistance, as defined in section 256.741, subdivision 1, received by the parties; and

(4) any other information relevant to the determination of support that is known to the public authority and that has not been otherwise provided by the parties.

The information must be filed with the court or child support magistrate at least five days before any hearing involving child support, medical support, or child care reimbursement issues.

Sec. 5. **[518.7124] POTENTIAL INCOME.**

Subdivision 1. **General.** If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom, practice, or agreement, use a normal work week of more or less than 40 hours in a week.

Subd. 2. **Methods.** Determination of potential income must be made according to one of three methods, as appropriate:

(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;

(2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or

(3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.

Subd. 3. **Parent not considered voluntarily unemployed or underemployed.** A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that:

(1) unemployment or underemployment is temporary and will ultimately lead to an increase in income;

(2) the unemployment or underemployment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or

(3) the parent is unable to work full time due to a verified disability or due to incarceration.

Subd. 4. **TANF recipient.** If the parent of a joint child is a recipient of a temporary assistance to a needy family (TANF) cash grant, no potential income is to be imputed to that parent.

Subd. 5. **Caretaker.** If a parent stays at home to care for a child who is subject to the child support order, the court may consider the following factors when determining whether the parent is voluntarily unemployed or underemployed:

(1) the parties' parenting and child care arrangements before the child support action;

(2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;

(3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;

(4) the child's age and health, including whether the child is physically or mentally disabled; and

(5) the availability of child care providers.

This paragraph does not apply if the parent stays at home only to care for other nonjoint children.

Subd. 6. **Economic conditions.** A self-employed parent is not considered to be voluntarily unemployed or underemployed if that parent can show that the parent's net self-employment income is lower because of economic conditions.

Sec. 6. Laws 2005, chapter 164, section 3, subdivision 6, is amended to read:

Subd. 6. **Filing fee.** The ~~initial pleading~~ first paper filed for a party in all proceedings for dissolution of marriage, legal separation, or annulment or proceedings to establish child support obligations shall be accompanied by a filing fee of $50. The fee is in addition to any other prescribed by law or rule.

EFFECTIVE DATE. This section is effective July 1, 2006.

Sec. 7. Laws 2005, chapter 164, section 4, is amended to read:

Sec. 4. **[518.1781] SIX-MONTH REVIEW.**

(a) A request for a six-month review hearing form must be attached to a decree of dissolution or legal separation or an order that initially establishes child custody, parenting time, or ~~support rights and obligations of parents~~ an amount of child support. The state court administrator is requested to prepare the request for review hearing form. The form must include a notice, in bold print, stating: Your failure to appear at this hearing may cause the court to order your appearance and may subject you to contempt of court. The form must include information regarding the procedures for requesting a hearing, the purpose of the hearing, and any other information regarding a hearing under this section that the state court administrator deems necessary.

(b) The six-month review hearing shall be held if any party submits a written request for a hearing within six months after entry of a decree of dissolution or legal separation or order that establishes child custody, parenting time, or support.

(c) Upon receipt of a completed request for hearing form, the court administrator shall provide notice of the hearing to all other parties and the public authority. The court administrator shall schedule the six-month review hearing as soon as practicable following

the receipt of the hearing request form. If the hearing request raises parenting time issues, the court administrator shall schedule the hearing before a district court judge.

(d) At the six-month hearing, the court ~~must~~ may review:

(1) whether child support is current; and

(2) whether both parties are complying with the parenting time provisions of the order.

The court must not modify custody or parenting time or child support orders at the hearing.

(e) At the six-month hearing, the obligor has the burden to present evidence to establish that child support payments are current. A party may request that the public authority provide information to the parties and court regarding child support payments. A party must request the information from the public authority at least 14 days before the hearing. The commissioner of human services must develop a form to be used by the public authority to submit child support payment information to the parties and court.

(f) Contempt of court and all statutory remedies for child support and parenting time enforcement may be imposed by the court at the six-month hearing for noncompliance by either party pursuant to ~~chapters 517C and~~ this chapter or chapter 588 and the Minnesota Court Rules, except that contempt of court powers may only be used against a party who appears at the hearing. If a party does not appear, the court may issue an order to show cause if the moving party has presented a sufficient factual basis to establish contempt.

(g) ~~A request for a six-month review hearing form must be attached to a decree or order that initially establishes child support rights and obligations according to section 517A.29.~~ The court shall conduct the six-month hearing as an informal proceeding at which the court may make appropriate inquiries to assure that the parties are complying with child support and parenting time orders. The court may take testimony only for purposes of a contempt of court finding.

Sec. 8. Laws 2005, chapter 164, section 5, is amended to read:

518.54 **DEFINITIONS.**

Subdivision 1. **Terms.** For the purposes of sections 518.54 to 518.773, the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **Child.** "Child" means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support.

Subd. 2a. **Deposit account.** "Deposit account" means funds deposited with a financial institution in the form of a savings account, checking account, NOW account, or demand deposit account.

Subd. 2b. **Financial institution.** "Financial institution" means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or savings association, and includes a branch or detached facility of a financial institution.

Subd. 3. **Maintenance.** "Maintenance" means an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.

Subd. 4. **Support money; child support.** "Support money" or "child support" means an amount for basic support, child care support, and medical support pursuant to:

(1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support and education of any child of the marriage or of the parties to the proceeding;

(2) a contribution by parents ordered under section 256.87; or

(3) support ordered under chapter 518B or 518C.

Subd. 4a. **Support order.** (a) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction:

(1) for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state~~, or~~;

(2) for a child and the parent with whom the child is living, that provides for monetary support, child care, medical support including expenses for confinement and pregnancy, arrearages, or reimbursement~~, and that~~; or

(3) for the maintenance of a spouse or former spouse.

(b) The support order may include related costs and fees, interest and penalties, income withholding, and other relief. This definition applies to orders issued under this chapter and chapters 256, 257, and 518C.

Subd. 5. **Marital property; exceptions.** "Marital property" means property, real or personal, including vested public or private pension plan benefits or rights, acquired by the parties, or either of them, to a dissolution, legal separation, or annulment proceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceeding, but prior to the date of valuation under section 518.58, subdivision 1. All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or

community property. Each spouse shall be deemed to have a common ownership in marital property that vests not later than the time of the entry of the decree in a proceeding for dissolution or annulment. The extent of the vested interest shall be determined and made final by the court pursuant to section 518.58. If a title interest in real property is held individually by only one spouse, the interest in the real property of the nontitled spouse is not subject to claims of creditors or judgment or tax liens until the time of entry of the decree awarding an interest to the nontitled spouse. The presumption of marital property is overcome by a showing that the property is nonmarital property.

"Nonmarital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

(a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

(b) is acquired before the marriage;

(c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);

(d) is acquired by a spouse after the valuation date; or

(e) is excluded by a valid antenuptial contract.

Subd. 6. **Income.** "Income" means any form of periodic payment to an individual including, but not limited to, wages, salaries, payments to an independent contractor, workers' compensation, unemployment benefits, annuity, military and naval retirement, pension and disability payments. Benefits received under Title IV-A of the Social Security Act and chapter 256J are not income under this section.

Subd. 7. **Obligee.** "Obligee" means a person to whom payments for maintenance or support are owed.

Subd. 8. **Obligor.** "Obligor" means a person obligated to pay maintenance or support. A person who ~~is designated as the sole physical custodian~~ has primary physical custody of a child is presumed not to be an obligor for purposes of ~~calculating current~~ a child support ~~under section 518.551~~ order under section 518.713, unless section 518.722, subdivision 3, applies or the court makes specific written findings to overcome this presumption. For purposes of ordering medical support under section 518.719, a ~~custodial~~ parent who has primary physical custody of a child may be an obligor subject to ~~a cost-of-living adjustment under section 518.641 and~~ a payment agreement under section 518.553.

Subd. 9. **Public authority.** "Public authority" means the local unit of government, acting on behalf of the state, that is responsible for child support enforcement or the Department of Human Services, Child Support Enforcement Division.

Subd. 10. **Pension plan benefits or rights.** "Pension plan benefits or rights" means a benefit or right from a public or private pension plan accrued to the end of the month in which marital assets are valued, as determined under the terms of the laws or other plan document provisions governing the plan, including section 356.30.

Subd. 11. **Public pension plan.** "Public pension plan" means a pension plan or fund specified in section 356.20, subdivision 2, or 356.30, subdivision 3, the deferred compensation plan specified in section 352.96, or any retirement or pension plan or fund, including a supplemental retirement plan or fund, established, maintained, or supported by a governmental subdivision or public body whose revenues are derived from taxation, fees, assessments, or from other public sources.

Subd. 12. **Private pension plan.** "Private pension plan" means a plan, fund, or program maintained by an employer or employee organization that provides retirement income to employees or results in a deferral of income by employees for a period extending to the termination of covered employment or beyond.

Subd. 13. **Arrears.** Arrears are amounts that accrue pursuant to an obligor's failure to comply with a support order. Past support and pregnancy and confinement expenses contained in a support order are arrears if the court order does not contain repayment terms. Arrears also arise by the obligor's failure to comply with the terms of a court order for repayment of past support or pregnancy and confinement expenses. An obligor's failure to comply with the terms for repayment of amounts owed for past support or pregnancy and confinement turns the entire amount owed into arrears.

Subd. 14. **IV-D case.** "IV-D case" means a case where a party has assigned to the state rights to child support because of the receipt of public assistance as defined in section 256.741 or has applied for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4).

Subd. 15. **Parental income for determining child support (PICS).** "Parental income for determining child support," or "PICS," means gross income ~~under subdivision 18~~ minus deductions for nonjoint children ~~as~~ allowed ~~by~~ under section 518.717.

Subd. 16. **Apportioned veterans' benefits.** "Apportioned veterans' benefits" means the amount the Veterans Administration deducts from the veteran's award and disburses to the child or the child's representative payee. The apportionment of veterans' benefits shall be that determined by the Veterans Administration and governed by Code of Federal Regulations, title 38, sections 3.450 to 3.458.

Subd. 17. **Basic support.** "Basic support" means the basic support obligation ~~determined by applying the parent's parental income for child support, or if there are two parents, their combined parental income for child support, to the guideline in the manner~~

~~set out in section 518.725~~ computed under section 518.713. Basic support includes the dollar amount ordered for a child's housing, food, clothing, transportation, and education costs, and other expenses relating to the child's care. Basic support does not include monetary contributions for a child's child care expenses and medical and dental expenses.

Subd. 18. **Gross income.** "Gross income" means~~:~~

~~(1)~~ the gross income of the parent calculated under section 518.7123~~; plus~~

~~(2) Social Security or veterans' benefit payments received on behalf of the child under section 518.718; plus~~

~~(3) the potential income of the parent, if any, as determined in subdivision 23; minus~~

~~(4) spousal maintenance that any party has been ordered to pay; minus~~

~~(5) the amount of any existing child support order for other nonjoint children~~.

Subd. 19. **Joint child.** "Joint child" means the dependent child who is the ~~son or daughter~~ child of both parents in the support proceeding. In ~~those~~ cases where support is sought from only one parent of a child, a joint child is the child for whom support is sought.

Subd. 20. **Nonjoint child.** "Nonjoint child" means the legal child of one, but not both of the parents ~~subject to this determination. Specifically excluded from this definition are~~ in the support proceeding. Nonjoint child does not include stepchildren.

Subd. 21. ~~**Parenting time.** "Parenting time" means the amount of time a child is scheduled to spend with the parent according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. For purposes of section 518.722, the percentage of parenting time may be calculated by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods where the child is in the parent's physical custody, but does not stay overnight.~~

~~Subd. 22.~~ **Payor of funds.** "Payor of funds" means a person or entity that provides funds to an obligor, including an employer as defined under chapter 24, section 3401(d), of the Internal Revenue Code, an independent contractor, payor of workers' compensation benefits or unemployment insurance benefits, or a financial institution as defined in section 13B.06.

~~Subd. 23. **Potential income.** "Potential income" is income determined under this subdivision.~~

~~(a) If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support shall be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.~~

~~(b) Determination of potential income shall be made according to one of three methods, as appropriate:~~

~~(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;~~

~~(2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or~~

~~(3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.~~

~~(c) A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that:~~

~~(1) unemployment or underemployment is temporary and will ultimately lead to an increase in income;~~

~~(2) the unemployment or underemployment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or~~

~~(3) the parent is unable to work full time due to a verified disability or due to incarceration.~~

~~(d) As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.~~

~~(e) If the parent of a joint child is a recipient of a temporary assistance to a needy family (TANF) cash grant, no potential income shall be imputed to that parent.~~

~~(f) If a parent stays at home to care for a child who is subject to the child support order, the court may consider the following factors when determining whether the parent is voluntarily unemployed or underemployed:~~

~~(1) the parties' parenting and child care arrangements before the child support action;~~

~~(2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;~~

~~(3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;~~

~~(4) the child's age and health, including whether the child is physically or mentally disabled; and~~

~~(5) the availability of child care providers.~~

~~(g) Paragraph (f) does not apply if the parent stays at home to care for other nonjoint children, only.~~

~~(h) A self-employed parent shall not be considered to be voluntarily unemployed or underemployed if that parent can show that the parent's net self-employment income is lower because of economic conditions.~~

~~Subd. 24.~~ Subd. 22. **Primary physical custody.** The parent having "primary physical custody" means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.

~~Subd. 25.~~ Subd. 23. **Social Security benefits.** "Social Security benefits" means the monthly ~~amount~~ retirement, survivors, or disability insurance benefits that the Social Security Administration ~~pays to~~ provides to a parent for that parent's own benefit or for the benefit of a joint child ~~or the child's representative payee due solely to the disability or retirement of either parent. Benefits paid~~. Social Security benefits do not include Supplemental Security Income benefits that the Social Security Administration provides to a parent for the parent's own benefit or to a parent due to the disability of a child ~~are excluded from this definition~~.

~~Subd. 26. **Split custody.** "Split custody" means that each parent in a two-parent calculation has primary physical custody of at least one of the joint children.~~

~~Subd. 27.~~ Subd. 24. **Survivors' and dependents' educational assistance.** "Survivors' and dependents' educational assistance" are funds disbursed by the Veterans Administration under United States Code, title 38, chapter 35, to the child or the child's representative payee.

Sec. 9. Laws 2005, chapter 164, section 8, is amended to read:

Sec. 8. Minnesota Statutes 2004, section 518.551, subdivision 5b, is amended to read:

Subd. 5b. **Providing income information.** (a) In any case where the parties have joint children for which a child support order must be determined, the parties shall serve and file with their initial pleadings or motion documents, a financial affidavit, disclosing all sources of gross income for purposes of section 518.7123. The financial affidavit shall include relevant supporting documentation necessary to calculate the parental income for child support under section 518.54, subdivision 15, including, but not limited to, pay stubs for the most recent three months, employer statements, or statements of receipts and expenses if self-employed. Documentation of earnings and income also include relevant copies of each parent's most recent federal tax returns, including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other

documents evidencing earnings or income as received that provide verification for the financial affidavit. The commissioner of human services shall prepare a financial affidavit form that must be used by the parties for disclosing information under this subdivision.

(b) In addition to the requirements of paragraph (a), at any time after an action seeking child support has been commenced or when a child support order is in effect, a party or the public authority may require the other party to give them a copy of the party's most recent federal tax returns that were filed with the Internal Revenue Service. The party shall provide a copy of the tax returns within 30 days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause.

(c) If a parent under the jurisdiction of the court does not serve and file the financial affidavit with the parent's initial pleading or motion documents, the court shall set income for that parent based on credible evidence before the court or in accordance with section ~~518.54, subdivision 23~~ 518.7124. Credible evidence may include documentation of current or recent income, testimony of the other parent concerning recent earnings and income levels, and the parent's wage reports filed with the Minnesota Department of Employment and Economic Development under section 268.044.

Sec. 10. Laws 2005, chapter 164, section 9, is amended to read:

Sec. 9. **[518.6197] CHILD SUPPORT DEBT/ARREARAGE MANAGEMENT.**

(a) In order to reduce and otherwise manage support debts and arrearages, the parties, including the public authority where arrearages have been assigned to the public authority, may compromise unpaid support debts or arrearages owed by one party to another, whether or not docketed as a judgment. A party may agree or disagree to compromise only those debts or arrearages owed to that party.

(b) The public authority shall consider the following factors in determining whether to compromise child support debt or arrearages:

(1) whether a party, either presently or during the period for which arrears accrued, had a significant physical or mental disability, was a recipient of federal Supplemental Security Income, Title II Older Americans, Survivor's Disability Insurance, or other disability benefits, or was a recipient of public assistance based upon need;

(2) the party was institutionalized or incarcerated for an offense other than nonsupport of a child during the period for which arrearages accrued and lacked the financial ability to pay the support ordered during that time period;

(3) the order for which the party seeks debt compromise was entered by default, the party had good cause for not appearing, and the record contains no factual evidence or clearly erroneous evidence, regarding the obligor's ability to pay; and

(4) other factors the public authority considers relevant to its decision.

Sec. 11. Laws 2005, chapter 164, section 10, subdivision 2, is amended to read:

Subd. 2. **Modification.** (a) The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: (1) substantially increased or decreased gross income of an obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee or the child or children that are the subject of these proceedings; (3) receipt of assistance under the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics~~, any of which makes the terms unreasonable and unfair~~; (5) extraordinary medical expenses of the child not provided for under section 518.171; (6) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or (7) upon the emancipation of the child, as provided in section 518.64, subdivision 4a.

(b) It is presumed that there has been a substantial change in circumstances under paragraph (a) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if:

(1) the application of the child support guidelines in section ~~518.551, subdivision 5~~ 518.725, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least $75 per month higher or lower than the current support order or, if the current support order is less than $75, it results in a calculated court order that is at least 20 percent per month higher or lower;

(2) the medical support provisions of the order established under section 518.719 are not enforceable by the public authority or the obligee;

(3) health coverage ordered under section 518.719 is not available to the child for whom the order is established by the parent ordered to provide;

(4) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount; or

(5) the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party.

(c) A child support order is not presumptively modifiable solely because an obligor or obligee becomes responsible for the support of an additional nonjoint child, which is born after an existing order. Section 518.717 shall be considered if other grounds are alleged which allow a modification of support.

(d) On a motion for modification of maintenance, including a motion for the extension of the duration of a maintenance award, the court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under section 518.552 that exist at the time of the motion. On a motion for modification of support, the court:

(1) shall apply section 518.725, and shall not consider the financial circumstances of each party's spouse, if any; and

(2) shall not consider compensation received by a party for employment in excess of a 40-hour work week, provided that the party demonstrates, and the court finds, that:

(i) the excess employment began after entry of the existing support order;

(ii) the excess employment is voluntary and not a condition of employment;

(iii) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;

(iv) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation;

(v) in the case of an obligor, current child support payments are at least equal to the guidelines amount based on income not excluded under this clause; and

(vi) in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

(e) A modification of support or maintenance, including interest that accrued pursuant to section 548.091, may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the public authority if public assistance is being furnished or the county attorney is the attorney of record.

(f) Except for an award of the right of occupancy of the homestead, provided in section 518.63, all divisions of real and personal property provided by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state, including motions under section 518.145, subdivision 2. The court may impose a lien or charge on the divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property as is provided by section 518.24.

(g) The court need not hold an evidentiary hearing on a motion for modification of maintenance or support.

(h) Section 518.14 shall govern the award of attorney fees for motions brought under this subdivision.

(i) Except as expressly provided, an enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order.

(j) There may be no modification of an existing child support order during the first year following the effective date of sections 518.7123 to 518.729 except as follows:

(1) there is at least a 20 percent change in the gross income of the obligor;

(2) there is a change in the number of joint children for whom the obligor is legally responsible and actually supporting;

(3) a parent or another caregiver of the child who is supported by the existing support order begins to receive public assistance, as defined in section 256.741;

(4) there are additional work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses;

(5) there is a change in the availability of health care coverage, as defined in section 518.719, subdivision 1, paragraph (a), or a substantial increase or decrease in the cost of existing health care coverage;

(6) the child supported by the existing child support order becomes disabled; or

~~(4)~~ (7) both parents consent to modification of the existing order ~~in compliance with the new income shares guidelines~~ under section 518.713.

A modification under clause (4) may be granted only with respect to child care support. A modification under clause (5) may be granted only with respect to medical support. This paragraph expires January 1, 2008.

(k) On the first modification ~~under the income shares method of calculation,~~ of a support order that was calculated under the statutory guidelines in effect before January 1, 2007, the court may phase in the modification of basic support ~~may be limited~~ if the ~~amount of the~~ full ~~variance~~ amount of the modification would create an undue hardship for ~~either~~ the obligor or the obligee.

Paragraph (j) expires January 1, 2008.

Sec. 12. Laws 2005, chapter 164, section 11, subdivision 7, is amended to read:

Subd. 7. **Child care exception.** Child care support must be based on the actual child care expenses. The court may provide that a ~~reduction~~ decrease in the amount ~~allocated for~~ of the child care ~~expenses~~ based on a ~~substantial~~ decrease in the actual child care expenses is effective as of the date the expense is decreased.

Sec. 13. Laws 2005, chapter 164, section 14, is amended to read:

Sec. 14. **[518.7123] CALCULATION OF GROSS INCOME.**

(a) ~~Except as excluded below~~ Subject to the exclusions and deductions in this section, gross income includes ~~income from any source~~ any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, ~~advances, bonuses, dividends, severance pay, pensions, interest, honoraria, trust income, annuities, return on capital, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, including lottery winnings, alimony, spousal maintenance payments, income from self-employment or operation of a business, as determined~~ self-employment income under section 518.7125, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child under section 518.718, and potential income under section 518.7124. ~~All salary~~ Salaries, wages, commissions, or other compensation paid by third parties shall be based upon Medicare gross income. No deductions shall be allowed for contributions to pensions, 401-K, IRA, or other retirement benefits.

(b) ~~Excluded and not counted in~~ Gross income ~~is~~ does not include compensation received by a party for employment in excess of a 40-hour work week, provided that:

(1) child support is ~~nonetheless~~ ordered in an amount at least equal to the guideline amount based on gross income not excluded under this clause; and

(2) the party demonstrates, and the court finds, that:

(i) the excess employment began after the filing of the petition for dissolution or legal separation or a petition or motion related to custody, parenting time, or support;

(ii) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;

(iii) the excess employment is voluntary and not a condition of employment;

(iv) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and

(v) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

(c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they reduce personal living expenses.

(d) Gross income may be calculated on either an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying the weekly income by 4.33.

(e) ~~Excluded and not counted as~~ Gross income ~~is any~~ does not include a child support payment received by a party. It is a rebuttable presumption that adoption

assistance payments, guardianship assistance payments, and foster care subsidies are ~~excluded and~~ not ~~counted as~~ gross income.

(f) ~~Excluded and not counted as~~ Gross income ~~is~~ does not include the income of the obligor's spouse and the obligee's spouse.

(g) Child support or spousal maintenance payments ordered by a court for a nonjoint child or former spouse or ordered payable to the other party as part of the current proceeding are deducted from other periodic payments received by a party for purposes of determining gross income.

Sec. 14. Laws 2005, chapter 164, section 15, is amended to read:

Sec. 15. **[518.7125] INCOME FROM SELF-EMPLOYMENT OR OPERATION OF A BUSINESS.**

For purposes of section 518.7123, income from self-employment~~, rent, royalties, proprietorship~~ or operation of a business, ~~or~~ including joint ownership of a partnership or closely held corporation, ~~gross income~~ is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support. The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary.

Sec. 15. Laws 2005, chapter 164, section 16, is amended to read:

Sec. 16. **[518.713] COMPUTATION OF CHILD SUPPORT OBLIGATIONS.**

(a) To determine the presumptive ~~amount of~~ child support ~~owed by~~ obligation of a parent, the court shall follow the procedure set forth in this section~~:~~.

(b) To determine the obligor's basic support obligation, the court shall:

(1) determine the gross income of each parent ~~using the definition in section 518.54, subdivision 18~~ under section 518.7123;

(2) calculate the parental income for determining child support (PICS) of each parent ~~under section 518.54, subdivision 15~~, by subtracting from the gross income the credit, if any, for each parent's nonjoint children under section 518.717;

(3) determine the percentage contribution of each parent to the combined PICS by dividing the combined PICS into each parent's PICS;

(4) determine the combined basic support obligation by application of the ~~schedule~~ guidelines in section 518.725;

(5) determine ~~each parent's~~ the obligor's share of the basic support obligation by multiplying the percentage figure from clause (3) by the combined basic support obligation in clause (4); and

(6) determine the parenting expense adjustment, if any, as provided in section 518.722, and adjust ~~that parent's~~ the obligor's basic support obligation accordingly~~;~~. If the parenting time of the parties is presumed equal, section 518.722, subdivision 3, applies to the calculation of the basic support obligation and a determination of which parent is the obligor.

~~(7)~~ (c) The court shall determine the child care support obligation for ~~each parent~~ the obligor as provided in section 518.72~~;~~.

~~(8)~~ (d) The court shall determine the ~~health care coverage~~ medical support obligation for each parent as provided in section 518.719. Unreimbursed and uninsured medical expenses are not included in the presumptive amount of support owed by a parent and are calculated and collected as described in section ~~518.722;~~ 518.719.

~~(9)~~ (e) The court shall determine each parent's total child support obligation by adding together each parent's basic support, child care support, and health care coverage obligations as provided in ~~clauses (1) to (8);~~

~~(10) reduce or increase each parent's total child support obligation by the amount of the health care coverage contribution paid by or on behalf of the other parent, as provided in section 518.719, subdivision 5;~~ this section.

~~(11)~~ (f) If Social Security benefits or veterans' benefits are received by one parent as a representative payee for a joint child ~~due to the other parent's disability or retirement,~~ based on the other parent's eligibility, the court shall subtract the amount of benefits from the other parent's net child support obligation, if any~~;~~.

~~(12) apply the self-support adjustment and minimum support obligation provisions as provided in section 518.724; and~~

~~(13)~~ (g) The final child support order shall separately designate the amount owed for basic support, child care support, and medical support. If applicable, the court shall use the self-support adjustment and minimum support adjustment under section 518.724 to determine the obligor's child support obligation.

Sec. 16. Laws 2005, chapter 164, section 17, subdivision 1, is amended to read:

Subdivision 1. **General factors.** Among other reasons, deviation from the presumptive ~~guideline amount~~ child support obligation computed under section 518.713 is intended to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty. In addition to the child support guidelines and other factors used to calculate the child support obligation under section

518.713, the court must take into consideration the following factors in setting or modifying child support or in determining whether to deviate upward or downward from the ~~guidelines~~ presumptive child support obligation:

(1) all earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of section 518.7123, paragraph (b)~~, clause (2)~~;

(2) the extraordinary financial needs and resources, physical and emotional condition, and educational needs of the child to be supported;

(3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

(4) which parent receives the income taxation dependency exemption and the financial benefit the parent receives from it;

(5) the parents' debts as provided in subdivision 2; and

(6) the obligor's total payments for court-ordered child support exceed the limitations set forth in section 571.922.

Sec. 17. Laws 2005, chapter 164, section 18, is amended to read:

Sec. 18. **[518.715] WRITTEN FINDINGS.**

Subdivision 1. **No deviation.** If the court does not deviate from the ~~guidelines~~ presumptive child support obligation computed under section 518.713, the court must make written findings ~~concerning the amount of the parties' gross income used as the basis for the guidelines calculation and~~ that state:

(1) each parent's gross income;

(2) each parent's PICS; and

(3) any other significant evidentiary factors affecting the child support determination.

Subd. 2. **Deviation.** ~~(a)~~ If the court deviates from the ~~guidelines by agreement of the parties or pursuant to~~ presumptive child support obligation computed under section ~~518.714~~ 518.713, the court must make written findings ~~giving~~ that state:

(1) each parent's gross income;

(2) each parent's PICS;

(3) the amount of the child support ~~calculated~~ obligation computed under ~~the guidelines;~~ section 518.713;

(4) the reasons for the deviation~~;~~; and ~~must specifically address~~

(5) how the deviation serves the best interests of the child~~; and~~.

~~(b) determine each parent's gross income and PICS.~~

Subd. 3. **Written findings required in every case.** The provisions of this section apply whether or not the parties are each represented by independent counsel and have

entered into a written agreement. The court must review stipulations presented to it for conformity ~~to the guidelines~~ with section 518.713. The court is not required to conduct a hearing, but the parties must provide sufficient documentation to verify the child support determination~~;~~ and to justify any deviation ~~from the guidelines~~.

Sec. 18. Laws 2005, chapter 164, section 20, is amended to read:

Sec. 20. **[518.717] DEDUCTION FROM INCOME FOR NONJOINT CHILDREN.**

(a) When either or both parents ~~of the joint child subject to this determination~~ are legally responsible for a nonjoint child ~~who resides in that parent's household~~, a ~~credit~~ deduction for this obligation shall be calculated under this section if:

(1) the nonjoint child primarily resides in the parent's household; and

(2) the parent is not obligated to pay basic child support for the nonjoint child to the other parent or a legal custodian of the child under an existing child support order.

(b) ~~Determine the gross income for each parent under section 518.54, subdivision 18.~~

~~(c) Using~~ The court shall use the ~~guideline as established in~~ guidelines under section 518.725~~;~~ to determine the basic child support obligation for the nonjoint child or children ~~who actually reside in the parent's household,~~ by using the gross income of the parent for whom the ~~credit~~ deduction is being calculated~~;~~ and ~~using~~ the number of nonjoint children ~~actually~~ primarily residing in the parent's ~~immediate~~ household. If the number of nonjoint children to be used for the determination is greater than two, the determination ~~shall~~ must be made using the number two instead of the greater number.

~~(d)~~ (c) The ~~credit~~ deduction for nonjoint children ~~shall be~~ is 50 percent of the guideline amount ~~from~~ determined under paragraph ~~(c)~~ (b).

Sec. 19. Laws 2005, chapter 164, section 21, is amended to read:

Sec. 21. **[518.718] SOCIAL SECURITY OR VETERANS' BENEFIT PAYMENTS RECEIVED ON BEHALF OF THE CHILD.**

(a) The amount of the monthly Social Security benefits or apportioned veterans' benefits ~~received by the child or on behalf of the~~ provided for a joint child shall be ~~added to~~ included in the gross income of the parent ~~for whom the disability or retirement benefit was paid~~ on whose eligibility the benefits are based.

(b) The amount of the monthly survivors' and dependents' educational assistance ~~received by the child or on behalf of the~~ provided for a joint child shall be ~~added to~~ included in the gross income of the parent ~~for whom the disability or retirement benefit was paid~~ on whose eligibility the benefits are based.

(c) If ~~the~~ Social Security or apportioned veterans' benefits are ~~paid on behalf~~ provided for a joint child based on the eligibility of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits ~~may~~ shall also be subtracted from the obligor's net child support obligation as calculated pursuant to section 518.713.

(d) If the survivors' and dependents' educational assistance is ~~paid on behalf~~ provided for a joint child based on the eligibility of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's net child support obligation as calculated ~~pursuant to~~ under section 518.713.

Sec. 20. Laws 2005, chapter 164, section 22, subdivision 2, is amended to read:

Subd. 2. **Order.** (a) A completed national medical support notice issued by the public authority or a court order that complies with this section is a qualified medical child support order under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a).

(b) Every order addressing child support must state:

(1) the names, last known addresses, and Social Security numbers of the parents and the joint child that is a subject of the order unless the court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan;

(2) whether appropriate health care coverage for the joint child is available and, if so, state:

(i) which ~~party~~ parent must carry health care coverage;

(ii) the cost of premiums and how the cost is allocated between the ~~parties~~ parents;

(iii) how unreimbursed expenses will be allocated and collected by the ~~parties~~ parents; and

(iv) the circumstances, if any, under which the obligation to provide health care coverage for the joint child will shift from one ~~party~~ parent to the other; and

(3) if appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required~~; and.~~

~~(4) whether the amount ordered for medical support is subject to a cost-of-living adjustment under section 518.641.~~

Sec. 21. Laws 2005, chapter 164, section 22, subdivision 3, is amended to read:

Subd. 3. [DETERMINING APPROPRIATE HEALTH CARE COVERAGE.] (a) In determining whether a ~~party~~ parent has appropriate health care coverage for the joint child, the court must evaluate the health plan using the following factors:

(1) accessible coverage. Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:

(i) primary care coverage is available within 30 minutes or 30 miles of the joint child's residence and specialty care coverage is available within 60 minutes or 60 miles of the joint child's residence;

(ii) the coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and

(iii) no preexisting conditions exist to delay coverage unduly;

(2) comprehensive coverage. Dependent health care coverage is presumed comprehensive if it includes~~, at a minimum,~~ medical and hospital coverage and provides for preventive, emergency, acute, and chronic care. If both ~~parties~~ parents have health care coverage that meets the minimum requirements, the court must determine which health care coverage is more comprehensive by considering whether the coverage includes:

(i) basic dental coverage;

(ii) orthodontia;

(iii) eyeglasses;

(iv) contact lenses;

(v) mental health services; or

(vi) substance abuse treatment;

(3) affordable coverage. Dependent health care coverage is affordable if it is reasonable in cost; and

(4) the joint child's special medical needs, if any.

(b) If both ~~parties~~ parents have health care coverage available for a joint child, and the court determines under paragraph (a), clauses (1) and (2), that the available coverage is comparable with regard to accessibility and comprehensiveness, the least costly health care coverage is the presumed appropriate health care coverage for the joint child.

Sec. 22. Laws 2005, chapter 164, section 22, subdivision 4, is amended to read:

Subd. 4. **Ordering health care coverage.** (a) If a joint child is presently enrolled in health care coverage, the court must order that the parent who currently has the joint child enrolled continue that enrollment unless the ~~parties~~ parents agree otherwise or a ~~party~~ parent requests a change in coverage and the court determines that other health care coverage is more appropriate.

(b) If a joint child is not presently enrolled in health care coverage, upon motion of a ~~party~~ parent or the public authority, the court must determine whether one or both ~~parties~~ parents have appropriate health care coverage for the joint child and order the ~~party~~ parent with appropriate health care coverage available to carry the coverage for the joint child.

(c) If only one ~~party~~ parent has appropriate health care coverage available, the court must order that ~~party~~ parent to carry the coverage for the joint child.

(d) If both ~~parties~~ parents have appropriate health care coverage available, the court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:

(1) either ~~party~~ parent expresses a preference for coverage available through the parent with whom the joint child does not reside;

(2) the parent with whom the joint child does not reside is already carrying dependent health care coverage for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or

(3) the parents agree to provide coverage and agree on the allocation of costs.

(e) If the exception in paragraph (d), clause (1) or (2), applies, the court must determine which ~~party~~ parent has the most appropriate coverage available and order that ~~party~~ parent to carry coverage for the joint child. If the court determines under subdivision 3, paragraph (a), clauses (1) and (2), that the ~~parties'~~ parents' health care coverage for the joint child is comparable with regard to accessibility and comprehensiveness, the court must presume that the ~~party~~ parent with the least costly health care coverage to carry coverage for the joint child.

(f) If neither ~~party~~ parent has appropriate health care coverage available, the court must order the parents to:

(1) contribute toward the actual health care costs of the joint children based on a pro rata share; or

(2) if the joint child is receiving any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of medical assistance under chapter 256B or MinnesotaCare under chapter 256L. The amount of contribution of the noncustodial parent is the amount the noncustodial parent would pay for the child's premiums if the noncustodial parent's PICS income meets the eligibility requirements for public coverage. For purposes of determining the premium amount, the noncustodial parent's household size is equal to one parent plus the child or children who are the subject of the child support order. If the noncustodial parent's PICS income exceeds the

eligibility requirements for public coverage, the court must order the noncustodial parent's contribution toward the full premium cost of the child's or children's coverage. The custodial parent's obligation is determined under the requirements for public coverage as set forth in chapter 256B or 256L. The court may order the parent with whom the child resides to apply for public coverage for the child.

~~(g) A presumption of no less than $50 per month must be applied to the actual health care costs of the joint children or to the cost of health care coverage.~~

~~(h)~~ (g) The commissioner of human services must publish a table with the premium schedule for public coverage and update the chart for changes to the schedule by July 1 of each year.

Sec. 23. Laws 2005, chapter 164, section 22, subdivision 16, is amended to read:

Subd. 16. ~~**Income withholding;**~~ **Offset.** (a) If a party ~~owes no joint child support obligation for a child~~ is the parent with primary physical custody as defined in section 518.54, subdivision 24, and is an obligor ordered to contribute to the other party's cost for carrying health care coverage for the joint child, the ~~obligor~~ other party's child support obligation is subject to an offset under subdivision 5 ~~or income withholding under section 518.6111~~.

~~(b) If a party's court-ordered health care coverage for the joint child terminates and the joint child is not enrolled in other health care coverage or public coverage, and a modification motion is not pending, the public authority may remove the offset to a party's child support obligation or terminate income withholding instituted against a party under section 518.6111. The public authority must provide notice to the parties of the action.~~

(b) The public authority, if the public authority provides services, may remove the offset to a party's child support obligation when:

(1) the party's court-ordered health care coverage for the joint child terminates;

(2) the party does not enroll the joint child in other health care coverage; and

(3) a modification motion is not pending.

The public authority must provide notice to the parties of the action.

(c) A party may contest the public authority's action to remove the offset to the child support obligation ~~or terminate income withholding~~ if the party makes a written request for a hearing within 30 days after receiving written notice. If a party makes a timely request for a hearing, the public authority must schedule a hearing and send written notice of the hearing to the parties by mail to the parties' last known addresses at least 14 days before the hearing. The hearing must be conducted in district court or in the expedited child support process if section 484.702 applies. The district court or child support

magistrate must determine whether removing the offset ~~or terminating income withholding~~ is appropriate and, if appropriate, the effective date for the removal ~~or termination~~.

(d) If the party does not request a hearing, the ~~district court or child support magistrate must order the offset or income withholding termination~~ public authority will remove the offset effective the first day of the month following termination of the joint child's health care coverage.

Sec. 24. Laws 2005, chapter 164, section 22, subdivision 17, is amended to read:

Subd. 17. **Collecting unreimbursed ~~and~~ or uninsured medical expenses.** (a) This subdivision and subdivision 18 apply when a court order has determined and ordered the parties' proportionate share and responsibility to contribute to unreimbursed or uninsured medical expenses.

(b) A party requesting reimbursement of unreimbursed or uninsured medical expenses must initiate a request ~~for reimbursement of unreimbursed and uninsured medical expenses~~ to the other party within two years of the date that the requesting party incurred the unreimbursed or uninsured medical expenses. ~~The time period in this paragraph does not apply if the location of the other party is unknown.~~ If a court order has been signed ordering the contribution towards unreimbursed or uninsured expenses, a two-year limitations provision must be applied to any requests made on or after January 1, 2007. The provisions of this section apply retroactively to court orders signed before January 1, 2007. Requests for unreimbursed or uninsured expenses made on or after January 1, 2007, may include expenses incurred before January 1, 2007, and on or after January 1, 2005.

~~(b)~~ (c) A requesting party ~~seeking reimbursement of unreimbursed and uninsured medical expenses~~ must mail a written notice of intent to collect the unreimbursed or uninsured medical expenses and a copy of an affidavit of health care expenses to the other party at the other party's last known address.

~~(c)~~ (d) The written notice must include a statement that the other party has 30 days from the date the notice was mailed to (1) pay in full; (2) ~~enter~~ agree to a payment ~~agreement~~ schedule; or (3) file a motion requesting a hearing ~~contesting the matter~~ to contest the amount due or to set a court-ordered monthly payment amount. If the public authority provides ~~support enforcement~~ services, the written notice also must include a statement that, if the other party does not respond within the 30 days, the requesting party ~~must~~ may submit the amount due to the public authority for collection.

~~(d)~~ (e) The affidavit of health care expenses must itemize and document the joint child's unreimbursed or uninsured medical expenses and include copies of all bills, receipts, and insurance company explanations of benefits.

(f) If the other party does not respond to the request for reimbursement within 30 days, the requesting party may commence enforcement against the other party under subdivision 18; file a motion for a court-ordered monthly payment amount under paragraph (h); or notify the public authority, if the public authority provides services, that the other party has not responded.

~~(e) If~~ (g) The notice to the public authority ~~provides support enforcement services, the party seeking reimbursement must send to the public authority~~ must include: a copy of the written notice, a copy of the ~~original~~ affidavit of health care expenses, and copies of all bills, receipts, and insurance company explanations of benefits.

~~(f) If the party does not respond to the request for reimbursement within 30 days, the party seeking reimbursement or public authority, if the public authority provides support enforcement services, must commence an enforcement action against the party under subdivision 18.~~

~~(g)~~ (h) If noticed under paragraph (f), the public authority must serve the other party with a notice of intent to enforce unreimbursed and uninsured medical expenses and file an affidavit of service by mail with the district court administrator. The notice must state that~~, unless~~ the other party has 14 days to (1) ~~pays~~ pay in full; or (2) ~~enters into a payment agreement; or (3) files~~ file a motion ~~contesting~~ to contest the ~~matter within 14 days of service of the notice,~~ amount due or to set a court-ordered monthly payment amount. The notice must also state that if there is no response within 14 days, the public authority will commence enforcement of the expenses as ~~medical support~~ arrears under subdivision 18.

~~(h) If the~~ (i) To contest the amount due or set a court-ordered monthly payment amount, a party ~~files~~ must file a timely motion ~~for a hearing contesting the requested reimbursement, the contesting party must~~ and schedule a hearing in district court or in the expedited child support process if section 484.702 applies. The ~~contesting~~ moving party must provide the other party ~~seeking reimbursement~~ and the public authority, if the public authority provides ~~support enforcement~~ services, with written notice ~~of the hearing~~ at least 14 days before the hearing by mailing notice of the hearing to the public authority and to the requesting party at the requesting party's last known address. The moving party ~~seeking reimbursement~~ must file the ~~original~~ affidavit of health care expenses with the court at least five days before the hearing. ~~Based upon the evidence presented,~~ The district court or child support magistrate must determine liability for the expenses and order that the liable party is subject to enforcement of the expenses as ~~medical support~~ arrears under subdivision 18 or set a court-ordered monthly payment amount.

Sec. 25. Laws 2005, chapter 164, section 22, subdivision 18, is amended to read:

Subd. 18. **Enforcing ~~an order for~~ unreimbursed or uninsured medical ~~support~~ expenses as arrears.** (a) ~~If a party liable for~~ Unreimbursed ~~and~~ or uninsured medical expenses ~~owes a child support obligation to the party seeking reimbursement of the expenses, the expenses must be~~ enforced under this subdivision are collected as ~~medical support~~ arrears.

~~(b) If a party liable for unreimbursed and uninsured medical expenses does not owe a child support obligation to the party seeking reimbursement, and the party seeking reimbursement owes the liable party basic support arrears, the liable party's medical support arrears must be deducted from the amount of the basic support arrears.~~

~~(c) If a liable party owes medical support arrears after deducting the amount owed from the amount of the child support arrears owed by the party seeking reimbursement, it must be collected as follows:~~

~~(1) if the party seeking reimbursement owes a child support obligation to the liable party, the child support obligation must be reduced by 20 percent until the medical support arrears are satisfied;~~

~~(2) if the party seeking reimbursement does not owe a child support obligation to the liable party, the liable party's income must be subject to income withholding under section 518.6111 for an amount required under section 518.553 until the medical support arrears are satisfied; or~~

~~(3) if the party seeking reimbursement does not owe a child support obligation, and income withholding under section 518.6111 is not available, payment of the medical support arrears must be required under a payment agreement under section 518.553.~~

~~(d) If a liable party fails to enter into or comply with a payment agreement, the party seeking reimbursement or the public authority, if it provides support enforcement services, may schedule a hearing to have a court order payment. The party seeking reimbursement or the public authority must provide the liable party with written notice of the hearing at least 14 days before the hearing.~~

(b) If the liable party is the parent with primary physical custody as defined in section 518.54, subdivision 24, the unreimbursed or uninsured medical expenses must be deducted from any arrears the requesting party owes the liable party. If unreimbursed or uninsured expenses remain after the deduction, the expenses must be collected as follows:

(1) If the requesting party owes a current child support obligation to the liable party, 20 percent of each payment received from the requesting party must be returned to the requesting party. The total amount returned to the requesting party each month must not exceed 20 percent of the current monthly support obligation.

(2) If the requesting party does not owe current child support or arrears, a payment agreement under section 518.553 is required. If the liable party fails to enter into or comply with a payment agreement, the requesting party or the public authority, if the public authority provides services, may schedule a hearing to set a court-ordered payment. The requesting party or the public authority must provide the liable party with written notice of the hearing at least 14 days before the hearing.

(c) If the liable party is not the parent with primary physical custody as defined in section 518.54, subdivision 24, the unreimbursed or uninsured medical expenses must be deducted from any arrears the requesting party owes the liable party. If unreimbursed or uninsured expenses remain after the deduction, the expenses must be added and collected as arrears owed by the liable party.

Sec. 26. Laws 2005, chapter 164, section 23, subdivision 1, is amended to read:

Subdivision 1. **Child care costs.** Unless otherwise agreed to by the parties and approved by the court, the court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly ~~parental income for determining child support~~ PICS. Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of a joint child. The Department of Human Services shall develop tables to calculate the applicable credit based upon the custodial parent's ~~parental income for determining child support~~ PICS.

Sec. 27. Laws 2005, chapter 164, section 23, subdivision 2, is amended to read:

Subd. 2. **Low-income obligor.** (a) If the obligor's ~~parental income for determining child support~~ PICS meets the income eligibility requirements for child care assistance under the basic sliding fee program under chapter 119B, the court must order the obligor to pay the lesser of the following amounts:

(1) the amount of the obligor's monthly co-payment for child care assistance under the basic sliding fee schedule established by the commissioner of education under chapter 119B, based on an obligor's monthly ~~parental income for determining child support~~ PICS and the size of the obligor's household provided that the obligee is actually receiving child care assistance under the basic sliding fee program. For purposes of this subdivision, the obligor's household includes the obligor and the number of joint children for whom child support is being ordered; or

(2) the amount of the obligor's child care obligation under subdivision 1.

(b) The commissioner of human services must publish a table with the child care assistance basic sliding fee amounts and update the table for changes to the basic sliding fee schedule by July 1 of each year.

Sec. 28. Laws 2005, chapter 164, section 24, is amended to read:

Sec. 24. **[518.722] PARENTING EXPENSE ADJUSTMENT.**

Subdivision 1. **General.** (a) ~~This section shall apply when the amount of parenting time granted to an obligor is ten percent or greater.~~ The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses. Every child support order shall specify the ~~total percent~~ percentage of parenting time granted to or presumed for each parent. For purposes of this section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

(b) If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment. If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.

Subd. 2. **Calculation of parenting expense adjustment.** ~~(b)~~ The obligor ~~shall be~~ is entitled to a parenting expense adjustment calculated as ~~follows~~ provided in this subdivision. The court shall:

(1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor below:

	Percentage Range of Parenting Time	Adjustment Percentage
(i)	less than 10 percent	no adjustment
(ii)	10 percent to 45 percent	12 percent
(iii)	45.1 percent to 50 percent	presume parenting time is equal

(2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment~~.~~; and

~~(c)~~ (3) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after parenting expense adjustment.

Subd. 3. **Calculation of basic support when parenting time presumed equal.**

~~(d)~~ (a) If the parenting time is equal~~, the expenses for the children are equally shared,~~ and the parental incomes for determining child support of the parents also are equal, no basic support shall be paid unless the court determines that the expenses for the child are not equally shared.

~~(e)~~ (b) If the parenting time is equal but the parents' parental incomes for determining child support are not equal, the parent having the greater parental income for determining child support shall be obligated for basic child support, calculated as follows:

(1) multiply the combined basic support calculated under section 518.713 by ~~1.5~~ 0.75;

(2) prorate the ~~basic child support obligation~~ amount under clause (1) between the parents~~;~~ based on each parent's proportionate share of the combined PICS; and

(3) subtract the lower amount from the higher amount ~~and divide the balance in half; and~~.

~~(3)~~ The resulting figure is the obligation after parenting expense adjustment for the parent with the greater ~~adjusted gross~~ parental income for determining child support.

~~(f) This parenting expense adjustment reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses.~~

~~(g) In the absence of other evidence, there is a rebuttable presumption that each parent has 25 percent of the parenting time for each joint child.~~

Sec. 29. Laws 2005, chapter 164, section 25, is amended to read:

Sec. 25. **[518.724] ABILITY TO PAY; SELF-SUPPORT ADJUSTMENT.**

Subdivision 1. **Ability to pay.** (a) It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, the court shall follow the procedure set out in this section~~:~~.

~~(1)~~ (b) The court shall calculate the obligor's income available for support by subtracting a monthly self-support reserve equal to 120 percent of the federal poverty guidelines for one person from the obligor's gross income~~;~~. If the obligor's income available for support calculated under this paragraph is equal to or greater than the obligor's support obligation calculated under section 518.713, the court shall order child support under section 518.713.

~~(2) compare the obligor's income available for support from clause (1) to the amount of support calculated as per section 518.713, clauses (1) to (15). The amount of child support that is presumed to be correct, as defined in section 518.713, is the lesser of these two amounts;~~

~~(3) this section does not apply to an incarcerated obligor;~~

~~(4) if the obligor's child support is reduced under clause (2),~~ (c) If the obligor's income available for support calculated under paragraph (b) is more than the minimum support amount under subdivision 2, but less than the guideline amount under section 518.713, then the court ~~must~~ shall apply ~~the~~ a reduction to the child support obligation in the following order, until the support order is equal to the obligor's income available for support:

~~(i)~~ (1) medical support obligation;

~~(ii)~~ (2) child ~~support~~ care support obligation; and

~~(iii)~~ (3) basic support obligation~~; and~~.

(d) If the obligor's income available for support calculated under paragraph (b) is equal to or less than the minimum support amount under subdivision 2 or if the obligor's gross income is less than 120 percent of the federal poverty guidelines for one person, the minimum support amount under subdivision 2 applies.

~~(5)~~ Subd. 2. **Minimum basic support amount.** (a) If the ~~obligor's income available for support is less than the self-support reserve~~ basic support amount applies, ~~then~~ the court must order the following amount as the minimum basic support ~~as follows~~ obligation:

~~(i)~~ (1) for one or two children, the obligor's basic support obligation is $50 per month;

~~(ii)~~ (2) for three or four children, the obligor's basic support obligation is $75 per month; and

~~(iii)~~ (3) for five or more children, the obligor's basic support obligation is $100 per month.

(b) If the court orders the obligor to pay the minimum basic support amount under this ~~paragraph~~ subdivision, the obligor is presumed unable to pay child care support and medical support.

If the court finds the obligor receives no income and completely lacks the ability to earn income, the minimum basic support amount under this ~~paragraph~~ subdivision does not apply.

Subd. 3. **Exception.** This section does not apply to an obligor who is incarcerated.

Sec. 30. Laws 2005, chapter 164, section 26, subdivision 2, as amended by Laws 2005, First Special Session chapter 7, section 27, subdivision 2, is amended to read:

Subd. 2. **Basic support; guideline.** Unless otherwise agreed to by the parents and approved by the court, when establishing basic support, the court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support~~, as determined under section 518.54, subdivision 15~~ (PICS). Basic support must be computed using the following guideline:

Combined Parental Income for Determining Child Support	Number of Children					
	One	Two	Three	Four	Five	Six
$0- $799	$50	$50	$75	$75	$100	$100
800-899	80	129	149	173	201	233
900-999	90	145	167	194	226	262
1,000- 1,099	116	161	186	216	251	291
1,100- 1,199	145	205	237	275	320	370
1,200- 1,299	177	254	294	341	396	459
1,300- 1,399	212	309	356	414	480	557
1,400- 1,499	251	368	425	493	573	664
1,500- 1,599	292	433	500	580	673	780
1,600- 1,699	337	502	580	673	781	905
1,700- 1,799	385	577	666	773	897	1,040
1,800- 1,899	436	657	758	880	1,021	1,183
1,900- 1,999	490	742	856	994	1,152	1,336
2,000- 2,099	516	832	960	1,114	1,292	1,498
2,100- 2,199	528	851	981	1,139	1,320	1,531
2,200- 2,299	538	867	1,000	1,160	1,346	1,561
2,300- 2,399	546	881	1,016	1,179	1,367	1,586
2,400- 2,499	554	893	1,029	1,195	1,385	1,608
2,500- 2,599	560	903	1,040	1,208	1,400	1,625
2,600- 2,699	570	920	1,060	1,230	1,426	1,655
2,700- 2,799	580	936	1,078	1,251	1,450	1,683
2,800- 2,899	589	950	1,094	1,270	1,472	1,707
2,900- 2,999	596	963	1,109	1,287	1,492	1,730
3,000- 3,099	603	975	1,122	1,302	1,509	1,749
3,100- 3,199	613	991	1,141	1,324	1,535	1,779
3,200- 3,299	623	1,007	1,158	1,344	1,558	1,807
3,300- 3,399	~~632~~ 636	1,021	1,175	1,363	1,581	1,833
3,400- 3,499	~~640~~ 650	1,034	1,190	1,380	1,601	1,857
3,500- 3,599	~~648~~ 664	1,047	1,204	1,397	1,621	1,880
3,600- 3,699	~~657~~ 677	1,062	1,223	1,418	1,646	1,909
3,700- 3,799	~~667~~ 691	1,077	1,240	1,439	1,670	1,937
3,800- 3,899	~~676~~ 705	1,081	1,257	1,459	1,693	1,963
3,900- 3,999	~~684~~ 719	1,104	1,273	1,478	1,715	1,988
4,000- 4,099	~~692~~ 732	1,116	1,288	1,496	1,736	2,012
4,100- 4,199	~~701~~ 746	1,132	1,305	1,516	1,759	2,039

4,200- 4,299	~~710~~ 760	1,147	1,322	1,536	1,781	2,064
4,300- 4,399	~~718~~ 774	1,161	1,338	1,554	1,802	2,088
4,400- 4,499	~~726~~ 787	1,175	1,353	1,572	1,822	2,111
4,500- 4,599	~~734~~ 801	1,184	1,368	1,589	1,841	2,133
4,600- 4,699	~~743~~ 808	1,200	1,386	1,608	1,864	2,160
4,700- 4,799	~~753~~ 814	1,215	1,402	1,627	1,887	2,186
4,800- 4,899	~~762~~ 820	1,231	1,419	1,645	1,908	2,212
4,900- 4,999	~~771~~ 825	1,246	1,435	1,663	1,930	2,236
5,000- 5,099	~~780~~ 831	1,260	1,450	1,680	1,950	2,260
5,100- 5,199	~~788~~ 837	1,275	1,468	1,701	1,975	2,289
5,200- 5,299	~~797~~ 843	1,290	1,485	1,722	1,999	2,317
5,300- 5,399	~~805~~ 849	1,304	1,502	1,743	2,022	2,345
5,400- 5,499	~~812~~ 854	1,318	1,518	1,763	2,046	2,372
5,500- 5,599	~~820~~ 860	1,331	1,535	1,782	2,068	2,398
5,600- 5,699	~~829~~ 866	1,346	1,551	1,801	2,090	2,424
5,700- 5,799	~~838~~ 873	1,357	1,568	1,819	2,111	2,449
5,800- 5,899	~~847~~ 881	1,376	1,583	1,837	2,132	2,473
5,900- 5,999	~~856~~ 888	1,390	1,599	1,855	2,152	2,497
6,000- 6,099	~~864~~ 895	1,404	1,604	1,872	2,172	2,520
6,100- 6,199	~~874~~ 902	1,419	1,631	1,892	2,195	2,546
6,200- 6,299	~~883~~ 909	1,433	1,645	1,912	2,217	2,572
6,300- 6,399	~~892~~ 916	1,448	1,664	1,932	2,239	2,597
6,400- 6,499	~~901~~ 923	1,462	1,682	1,951	2,260	2,621
6,500- 6,599	~~910~~ 930	1,476	1,697	1,970	2,282	2,646
6,600- 6,699	~~919~~ 936	1,490	1,713	1,989	2,305	2,673
6,700- 6,799	~~927~~ 943	1,505	1,730	2,009	2,328	2,700
6,800- 6,899	~~936~~ 950	1,519	1,746	2,028	2,350	2,727
6,900- 6,999	~~944~~ 957	1,533	1,762	2,047	2,379	~~2,753~~ 2,747
7,000- 7,099	~~952~~ 963	1,547	1,778	2,065	2,394	~~2,779~~ 2,753
7,100- 7,199	~~961~~ 970	1,561	1,795	2,085	2,417	~~2,805~~ 2,758
7,200- 7,299	~~971~~ 974	1,574	1,812	2,104	2,439	~~2,830~~ 2,764
7,300- 7,399	980	1,587	1,828	2,123	2,462	~~2,854~~ 2,769
7,400- 7,499	989	1,600	1,844	2,142	2,483	~~2,879~~ 2,775
7,500- 7,599	998	1,613	1,860	2,160	2,505	~~2,903~~ 2,781
7,600- 7,699	1,006	1,628	1,877	2,180	2,528	~~2,929~~ 2,803
7,700- 7,799	1,015	1,643	1,894	2,199	2,550	~~2,955~~ 2,833
7,800- 7,899	1,023	1,658	1,911	2,218	2,572	~~2,981~~ 2,864
7,900- 7,999	1,032	1,673	1,928	2,237	2,594	~~3,007~~ 2,894

8,000- 8,099	1,040	1,688	1,944	2,256	2,616	~~3,032~~ 2,925
8,100- 8,199	1,048	1,703	1,960	2,274	2,637	~~3,057~~ 2,955
8,200- 8,299	1,056	1,717	1,976	2,293	2,658	~~3,082~~ 2,985
8,300 -8,399	1,064	1,731	1,992	2,311	2,679	~~3,106~~ 3,016
8,400- 8,499	1,072	1,746	2,008	2,328	2,700	~~3,130~~ 3,046
8,500- 8,599	1,080	1,760	2,023	2,346	2,720	~~3,154~~ 3,077
8,600- 8,699	1,092	1,780	2,047	2,374	2,752	~~3,191~~ 3,107
8,700- 8,799	1,105	1,801	2,071	2,401	2,784	~~3,228~~ 3,138
8,800- 8,899	1,118	1,822	2,094	2,429	2,816	~~3,265~~ 3,168
8,900- 8,999	1,130	1,842	2,118	2,456	2,848	~~3,302~~ 3,199
9,000- 9,099	1,143	1,863	2,142	2,484	2,880	~~3,339~~ 3,223
9,100- 9,199	1,156	1,884	2,166	2,512	2,912	~~3,376~~ 3,243
9,200- 9,299	1,168	1,904	2,190	2,539	2,944	~~3,413~~ 3,263
9,300- 9,399	1,181	1,925	2,213	2,567	2,976	~~3,450~~ 3,284
9,400- 9,499	1,194	1,946	2,237	2,594	3,008	~~3,487~~ 3,304
9,500- 9,599	1,207	1,967	2,261	2,622	~~3,040~~ 3,031	~~3,525~~ 3,324
9,600- 9,699	1,219	1,987	2,285	2,650	~~3,072~~ 3,050	~~3,562~~ 3,345
9,700- 9,799	1,232	2,008	2,309	2,677	~~3,104~~ 3,069	~~3,599~~ 3,365
9,800- 9,899	1,245	2,029	2,332	2,705	~~3,136~~ 3,087	~~3,636~~ 3,385
9,900- 9,999	1,257	2,049	2,356	2,732	~~3,168~~ 3,106	~~3,673~~ 3,406
10,000-10,099	1,270	2,070	2,380	2,760	~~3,200~~ 3,125	~~3,710~~ 3,426
10,100-10,199	1,283	2,091	2,404	2,788	~~3,232~~ 3,144	~~3,747~~ 3,446
10,200-10,299	1,295	2,111	2,428	2,815	~~3,264~~ 3,162	~~3,784~~ 3,467
10,300-10,399	1,308	2,132	2,451	2,843	~~3,296~~ 3,181	~~3,821~~ 3,487
10,400-10,499	1,321	2,153	2,475	2,870	~~3,328~~ 3,200	~~3,858~~ 3,507
10,500-10,599	1,334	2,174	2,499	2,898	~~3,360~~ 3,218	~~3,896~~ 3,528
10,600-10,699	1,346	2,194	2,523	~~2,926~~ 2,921	~~3,392~~ 3,237	~~3,933~~ 3,548

10,700-10,799	1,359	2,215	2,547	~~2,953~~ 2,938	~~3,424~~ 3,256	~~3,970~~ 3,568
10,800-10,899	1,372	2,236	2,570	~~2,981~~ 2,955	~~3,456~~ 3,274	~~4,007~~ 3,589
10,900-10,999	1,384	2,256	2,594	~~3,008~~ 2,972	~~3,488~~ 3,293	~~4,044~~ 3,609
11,000-11,099	1,397	2,277	2,618	~~3,036~~ 2,989	~~3,520~~ 3,312	~~4,081~~ 3,629
11,100-11,199	1,410	~~2,298~~ 2,294	2,642	~~3,064~~ 3,006	~~3,552~~ 3,331	~~4,118~~ 3,649
11,200-11,299	1,422	~~2,318~~ 2,306	2,666	~~3,091~~ 3,023	~~3,584~~ 3,349	~~4,155~~ 3,667
11,300-11,399	1,435	~~2,339~~ 2,319	2,689	~~3,119~~ 3,040	~~3,616~~ 3,366	~~4,192~~ 3,686
11,400-11,499	1,448	~~2,360~~ 2,331	2,713	~~3,146~~ 3,055	~~3,648~~ 3,383	~~4,229~~ 3,705
11,500-11,599	1,461	~~2,381~~ 2,344	~~2,737~~ 2,735	~~3,174~~ 3,071	~~3,680~~ 3,400	~~4,267~~ 3,723
11,600-11,699	1,473	~~2,401~~ 2,356	~~2,761~~ 2,748	~~3,202~~ 3,087	~~3,712~~ 3,417	~~4,304~~ 3,742
11,700-11,799	1,486	~~2,422~~ 2,367	~~2,785~~ 2,762	~~3,229~~ 3,102	~~3,744~~ 3,435	~~4,341~~ 3,761
11,800-11,899	1,499	~~2,443~~ 2,378	~~2,808~~ 2,775	~~3,257~~ 3,116	~~3,776~~ 3,452	~~4,378~~ 3,780
11,900-11,999	1,511	~~2,463~~ 2,389	~~2,832~~ 2,788	~~3,284~~ 3,131	~~3,808~~ 3,469	~~4,415~~ 3,798
12,000-12,099	1,524	~~2,484~~ 2,401	~~2,856~~ 2,801	~~3,312~~ 3,146	~~3,840~~ 3,485	~~4,452~~ 3,817
12,100-12,199	1,537	~~2,505~~ 2,412	~~2,880~~ 2,814	~~3,340~~ 3,160	~~3,872~~ 3,501	~~4,489~~ 3,836
12,200-12,299	1,549	~~2,525~~ 2,423	~~2,904~~ 2,828	~~3,367~~ 3,175	~~3,904~~ 3,517	~~4,526~~ 3,854
12,300-12,399	1,562	~~2,546~~ 2,434	~~2,927~~ 2,841	~~3,395~~ 3,190	~~3,936~~ 3,534	~~4,563~~ 3,871
12,400-12,499	1,575	~~2,567~~ 2,445	~~2,951~~ 2,854	~~3,422~~ 3,205	~~3,968~~ 3,550	~~4,600~~ 3,889
12,500-12,599	1,588	~~2,588~~ 2,456	~~2,975~~ 2,867	~~3,450~~ 3,219	~~4,000~~ 3,566	~~4,638~~ 3,907
12,600-12,699	1,600	~~2,608~~ 2,467	~~2,999~~ 2,880	~~3,478~~ 3,234	~~4,032~~ 3,582	~~4,675~~ 3,924
12,700-12,799	1,613	~~2,629~~ 2,478	~~3,023~~ 2,894	~~3,505~~ 3,249	~~4,064~~ 3,598	~~4,712~~ 3,942
12,800-12,899	1,626	~~2,650~~ 2,489	~~3,046~~ 2,907	~~3,533~~ 3,264	~~4,096~~ 3,615	~~4,749~~ 3,960
12,900-12,999	1,638	~~2,670~~ 2,500	~~3,070~~ 2,920	~~3,560~~ 3,278	~~4,128~~ 3,631	~~4,786~~ 3,977
13,000-13,099	1,651	~~2,691~~ 2,512	~~3,094~~ 2,933	~~3,588~~ 3,293	~~4,160~~ 3,647	~~4,823~~ 3,995
13,100-13,199	1,664	~~2,712~~ 2,523	~~3,118~~ 2,946	~~3,616~~ 3,308	~~4,192~~ 3,663	~~4,860~~ 4,012
13,200-13,299	1,676	~~2,732~~ 2,534	~~3,142~~ 2,960	~~3,643~~ 3,322	~~4,224~~ 3,679	~~4,897~~ 4,030
13,300-13,399	1,689	~~2,753~~ 2,545	~~3,165~~ 2,973	~~3,671~~ 3,337	~~4,256~~ 3,696	~~4,934~~ 4,048

13,400-13,499	1,702	~~2,774~~ 2,556	~~3,189~~ 2,986	~~3,698~~ 3,352	~~4,288~~ 3,712	~~4,971~~ 4,065
13,500-13,599	1,715	~~2,795~~ 2,567	~~3,213~~ 2,999	~~3,726~~ 3,367	~~4,320~~ 3,728	~~5,009~~ 4,083
13,600-13,699	1,727	~~2,815~~ 2,578	~~3,237~~ 3,012	~~3,754~~ 3,381	~~4,352~~ 3,744	~~5,046~~ 4,100
13,700-13,799	1,740	~~2,836~~ 2,589	~~3,261~~ 3,026	~~3,781~~ 3,396	~~4,384~~ 3,760	~~5,083~~ 4,118
13,800-13,899	1,753	~~2,857~~ 2,600	~~3,284~~ 3,039	~~3,809~~ 3,411	~~4,416~~ 3,777	~~5,120~~ 4,136
13,900-13,999	1,765	~~2,877~~ 2,611	~~3,308~~ 3,052	~~3,836~~ 3,425	~~4,448~~ 3,793	~~5,157~~ 4,153
14,000-14,099	1,778	~~2,898~~ 2,623	~~3,332~~ 3,065	~~3,864~~ 3,440	~~4,480~~ 3,809	~~5,194~~ 4,171
14,100-14,199	1,791	~~2,919~~ 2,634	~~3,356~~ 3,078	~~3,892~~ 3,455	~~4,512~~ 3,825	~~5,231~~ 4,189
14,200-14,299	1,803	~~2,939~~ 2,645	~~3,380~~ 3,092	~~3,919~~ 3,470	~~4,544~~ 3,841	~~5,268~~ 4,206
14,300-14,399	1,816	~~2,960~~ 2,656	~~3,403~~ 3,105	~~3,947~~ 3,484	~~4,576~~ 3,858	~~5,305~~ 4,224
14,400-14,499	1,829	~~2,981~~ 2,667	~~3,427~~ 3,118	~~3,974~~ 3,499	~~4,608~~ 3,874	~~5,342~~ 4,239
14,500-14,599	1,842	~~3,002~~ 2,678	~~3,451~~ 3,131	~~4,002~~ 3,514	~~4,640~~ 3,889	~~5,380~~ 4,253
14,600-14,699	1,854	~~3,022~~ 2,689	~~3,475~~ 3,144	~~4,030~~ 3,529	~~4,672~~ 3,902	~~5,417~~ 4,268
14,700-14,799	~~1,867~~ 1,864	~~3,043~~ 2,700	~~3,499~~ 3,158	~~4,057~~ 3,541	~~4,704~~ 3,916	~~5,454~~ 4,282
14,800-14,899	~~1,880~~ 1,872	~~3,064~~ 2,711	~~3,522~~ 3,170	~~4,085~~ 3,553	~~4,736~~ 3,929	~~5,491~~ 4,297
14,900-14,999	~~1,892~~ 1,879	~~3,084~~ 2,722	~~3,546~~ 3,181	~~4,112~~ 3,565	~~4,768~~ 3,942	~~5,528~~ 4,311
15,000, or the amount in effect under subd. 4	~~1,905~~ 1,883	~~3,105~~ 2,727	~~3,570~~ 3,186	~~4,140~~ 3,571	~~4,800~~ 3,949	~~5,565~~ 4,319

Sec. 31. Laws 2005, chapter 164, section 31, is amended to read:

Sec. 31. **REPEALER.**

Minnesota Statutes 2004, sections 518.171; ~~518.54, subdivisions 2, 4, and 4a;~~ and 518.551, subdivisions 1, 5a, 5c, and 5f, are repealed.

Sec. 32. Laws 2005, chapter 164, section 32, the effective date, is amended to read:

Sec. 32. **EFFECTIVE DATE.**

Except as otherwise provided, this act is effective January 1, 2007~~, and applies to orders adopted or modified after that date~~. With respect to the calculation of child support, this act applies to actions commenced or motions filed after the effective date, including those involving support orders in effect before the effective date. The provisions of this act used to calculate support obligations apply to actions or motions for past support or reimbursement filed on or after January 1, 2007. The terms and provisions of any court

orders in effect before January 1, 2007, remain in full force and effect until modified by subsequent orders, judgments, decrees of dissolutions, or legal separations signed on or after January 1, 2007, when the provisions of this act must be applied. Sections 1 to 3 of this act are effective July 1, 2005.

Sec. 33. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change cross-references in Minnesota Statutes from section 518.171 to section 518.719.

Sec. 34. **REPEALER.**

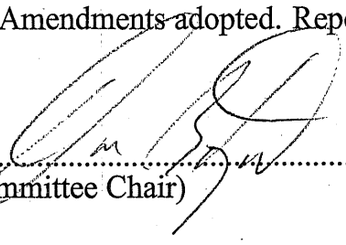
Laws 2005, chapter 164, section 12, is repealed.

Sec. 35. **EFFECTIVE DATE.**

Except where otherwise indicated, this act is effective January 1, 2007."

Amend the title accordingly

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



.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

To: Senator Betzold, Chair

Committee on Judiciary

Senator Neuville,

Chair of the Subcommittee on Family Law, to which was referred

S.F. No. 3199: A bill for an act relating to family law; changing certain child support and maintenance provisions;amending Minnesota Statutes 2004, section 518.551, subdivision 6, by adding a subdivision; Laws 2005, chapter 164, sections 4; 5, subdivisions 4a, 8, 15, 18; 8; 10; 14; 15; 16; 18; 20; 21; 22, subdivisions 2, 4, 16, 17, 18; 24; 25; 31; 32; repealing Minnesota Statutes 2004, section 518.54, subdivision 2; Minnesota Statutes 2005 Supplement, section 518.54, subdivision 4a; Laws 2005, chapter 164, section 12.

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

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 518.175, subdivision 1, is amended to read:

Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.

If the court finds, after a hearing, that parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the parent prior to the commencement of the proceeding.

A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of parenting time.

(b) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with parenting time.

(c) Upon request of either party, to the extent practicable an order for parenting time must include a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, unless parenting time is restricted, denied, or reserved.

(d) The court administrator shall provide a form for a pro se motion regarding parenting time disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the parenting time expeditor process under section 518.1751. The form may not include

a request for a change of custody. The court shall provide instructions on serving and filing the motion.

(e) In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child. For purposes of this paragraph, the percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent or by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Sec. 2. Minnesota Statutes 2004, section 518.551, is amended by adding a subdivision to read:

Subd. 1a. **Scope; payment to public authority.** (a) This section applies to all proceedings involving a support order, including, but not limited to, a support order establishing an order for past support or reimbursement of public assistance.

(b) The court shall direct that all payments ordered for maintenance or support be made to the public authority responsible for child support enforcement so long as the obligee is receiving or has applied for public assistance, or has applied for child support or maintenance collection services. Public authorities responsible for child support enforcement may act on behalf of other public authorities responsible for child support enforcement, including the authority to represent the legal interests of or execute documents on behalf of the other public authority in connection with the establishment, enforcement, and collection of child support, maintenance, or medical support, and collection on judgments.

(c) Payments made to the public authority other than payments under section 518.6111 must be credited as of the date the payment is received by the central collections unit.

(d) Monthly amounts received by the public agency responsible for child support enforcement from the obligor that are greater than the monthly amount of public assistance granted to the obligee must be remitted to the obligee.

Sec. 3. Minnesota Statutes 2004, section 518.551, subdivision 6, is amended to read:

Subd. 6. **Failure of notice.** If the court in a dissolution, legal separation or determination of parentage proceeding, finds before issuing the order for judgment and decree, that notification has not been given to the public authority, the court shall set child support ~~according to the guidelines in subdivision 5~~ as provided in Laws 2005, chapter 164, section 26. In those proceedings in which no notification has been made pursuant to

this section and in which the public authority determines that the judgment is lower than the child support required by the guidelines in subdivision 5, it shall move the court for a redetermination of the support payments ordered so that the support payments comply with the guidelines.

Sec. 4. Minnesota Statutes 2004, section 518.5513, subdivision 3, is amended to read:

Subd. 3. **Contents of pleadings.** (a) In cases involving establishment or modification of a child support order, the initiating party shall include the following information, if known, in the pleadings:

(1) names, addresses, and dates of birth of the parties;

(2) Social Security numbers of the parties and the minor children of the parties, which information shall be considered private information and shall be available only to the parties, the court, and the public authority;

(3) other support obligations of the obligor;

(4) names and addresses of the parties' employers;

(5) ~~net~~ gross income of the parties as ~~defined~~ calculated in section ~~518.551, subdivision 5, with the authorized deductions itemized~~ 518.7123;

(6) amounts and sources of any other earnings and income of the parties;

(7) health insurance coverage of parties;

(8) types and amounts of public assistance received by the parties, including Minnesota family investment plan, child care assistance, medical assistance, MinnesotaCare, title IV-E foster care, or other form of assistance as defined in section 256.741, subdivision 1; and

(9) any other information relevant to the ~~determination~~ computation of the child ~~or medical~~ support obligation under section ~~518.171 or 518.551, subdivision 5~~ 518.713.

(b) For all matters scheduled in the expedited process, whether or not initiated by the public authority, the nonattorney employee of the public authority shall file with the court and serve on the parties the following information:

(1) information pertaining to the income of the parties available to the public authority from the Department of Employment and Economic Development;

(2) a statement of the monthly amount of child support, medical support, child care, and arrears currently being charged the obligor on Minnesota IV-D cases;

(3) a statement of the types and amount of any public assistance, as defined in section 256.741, subdivision 1, received by the parties; and

(4) any other information relevant to the determination of support that is known to the public authority and that has not been otherwise provided by the parties.

The information must be filed with the court or child support magistrate at least five days before any hearing involving child support, medical support, or child care reimbursement issues.

Sec. 5. **[518.7124] POTENTIAL INCOME.**

Subdivision 1. **General.** If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom, practice, or agreement, use a normal work week of more or less than 40 hours in a week.

Subd. 2. **Methods.** Determination of potential income must be made according to one of three methods, as appropriate:

(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;

(2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or

(3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.

Subd. 3. **Parent not considered voluntarily unemployed or underemployed.** A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that:

(1) unemployment or underemployment is temporary and will ultimately lead to an increase in income;

(2) the unemployment or underemployment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or

(3) the parent is unable to work full time due to a verified disability or due to incarceration.

Subd. 4. **TANF recipient.** If the parent of a joint child is a recipient of a temporary assistance to a needy family (TANF) cash grant, no potential income is to be imputed to that parent.

Subd. 5. **Caretaker.** If a parent stays at home to care for a child who is subject to the child support order, the court may consider the following factors when determining whether the parent is voluntarily unemployed or underemployed:

(1) the parties' parenting and child care arrangements before the child support action;

(2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;

(3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;

(4) the child's age and health, including whether the child is physically or mentally disabled; and

(5) the availability of child care providers.

This paragraph does not apply if the parent stays at home only to care for other nonjoint children.

Subd. 6. **Economic conditions.** A self-employed parent is not considered to be voluntarily unemployed or underemployed if that parent can show that the parent's net self-employment income is lower because of economic conditions.

Sec. 6. Laws 2005, chapter 164, section 3, subdivision 6, is amended to read:

Subd. 6. **Filing fee.** The ~~initial pleading~~ first paper filed for a party in all proceedings for dissolution of marriage, legal separation, or annulment or proceedings to establish child support obligations shall be accompanied by a filing fee of $50. The fee is in addition to any other prescribed by law or rule.

EFFECTIVE DATE. This section is effective July 1, 2006.

Sec. 7. Laws 2005, chapter 164, section 4, is amended to read:

Sec. 4. **[518.1781] SIX-MONTH REVIEW.**

(a) A request for a six-month review hearing form must be attached to a decree of dissolution or legal separation or an order that initially establishes child custody, parenting time, or ~~support rights and obligations of parents~~ an amount of child support. The state court administrator is requested to prepare the request for review hearing form. The form must include information regarding the procedures for requesting a hearing, the purpose of the hearing, and any other information regarding a hearing under this section that the state court administrator deems necessary.

(b) The six-month review hearing shall be held if any party submits a written request for a hearing within six months after entry of a decree of dissolution or legal separation or order that establishes child custody, parenting time, or support.

(c) Upon receipt of a completed request for hearing form, the court administrator shall provide notice of the hearing to all other parties and the public authority. The court administrator shall schedule the six-month review hearing as soon as practicable following the receipt of the hearing request form. If the hearing request raises parenting time issues, the court administrator shall schedule the hearing before a district court judge.

(d) At the six-month hearing, the court must review:

(1) whether child support is current; and

(2) whether both parties are complying with the parenting time provisions of the order.

The court must not modify custody or parenting time or child support orders at the hearing.

(e) At the six-month hearing, the obligor has the burden to present evidence to establish that child support payments are current. A party may request that the public authority provide information to the parties and court regarding child support payments. A party must request the information from the public authority at least 14 days before the hearing. The commissioner of human services must develop a form to be used by the public authority to submit child support payment information to the parties and court.

(f) Contempt of court and all statutory remedies for child support and parenting time enforcement may be imposed by the court at the six-month hearing for noncompliance by either party pursuant to ~~chapters 517C and~~ this chapter or chapter 588 and the Minnesota Court Rules, except that contempt of court powers may only be used against a party who appears at the hearing. If a party does not appear, the court shall issue an order to show cause if the moving party has presented a sufficient factual basis to establish contempt.

(g) ~~A request for a six-month review hearing form must be attached to a decree or order that initially establishes child support rights and obligations according to section 517A.29.~~ The court shall conduct the six-month hearing as an informal proceeding at which the court may make appropriate inquiries to assure that the parties are complying with child support and parenting time orders. The court may take testimony only for purposes of a contempt of court finding.

Sec. 8. Laws 2005, chapter 164, section 5, is amended to read:

518.54 **DEFINITIONS.**

Subdivision 1. **Terms.** For the purposes of sections 518.54 to 518.773, the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **Child.** "Child" means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support.

Subd. 2a. **Deposit account.** "Deposit account" means funds deposited with a financial institution in the form of a savings account, checking account, NOW account, or demand deposit account.

Subd. 2b. **Financial institution.** "Financial institution" means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or savings association, and includes a branch or detached facility of a financial institution.

Subd. 3. **Maintenance.** "Maintenance" means an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.

Subd. 4. **Support money; child support.** "Support money" or "child support" means an amount for basic support, child care support, and medical support pursuant to:

(1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support and education of any child of the marriage or of the parties to the proceeding;

(2) a contribution by parents ordered under section 256.87; or

(3) support ordered under chapter 518B or 518C.

Subd. 4a. **Support order.** (a) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction~~;~~:

(1) for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state~~, or;~~

(2) for a child and the parent with whom the child is living, that provides for monetary support, child care, medical support including expenses for confinement and pregnancy, arrearages, or reimbursement~~, and that~~; or

(3) for the maintenance of a spouse or former spouse.

(b) The support order may include related costs and fees, interest and penalties, income withholding, and other relief. This definition applies to orders issued under this chapter and chapters 256, 257, and 518C.

Subd. 5. **Marital property; exceptions.** "Marital property" means property, real or personal, including vested public or private pension plan benefits or rights, acquired by the parties, or either of them, to a dissolution, legal separation, or annulment proceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceeding, but prior to the date of valuation under section 518.58, subdivision 1. All property acquired by either

spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. Each spouse shall be deemed to have a common ownership in marital property that vests not later than the time of the entry of the decree in a proceeding for dissolution or annulment. The extent of the vested interest shall be determined and made final by the court pursuant to section 518.58. If a title interest in real property is held individually by only one spouse, the interest in the real property of the nontitled spouse is not subject to claims of creditors or judgment or tax liens until the time of entry of the decree awarding an interest to the nontitled spouse. The presumption of marital property is overcome by a showing that the property is nonmarital property.

"Nonmarital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

(a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

(b) is acquired before the marriage;

(c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);

(d) is acquired by a spouse after the valuation date; or

(e) is excluded by a valid antenuptial contract.

Subd. 6. **Income.** "Income" means any form of periodic payment to an individual including, but not limited to, wages, salaries, payments to an independent contractor, workers' compensation, unemployment benefits, annuity, military and naval retirement, pension and disability payments. Benefits received under Title IV-A of the Social Security Act and chapter 256J are not income under this section.

Subd. 7. **Obligee.** "Obligee" means a person to whom payments for maintenance or support are owed.

Subd. 8. **Obligor.** "Obligor" means a person obligated to pay maintenance or support. A person who ~~is designated as the sole physical custodian~~ has primary physical custody of a child is presumed not to be an obligor for purposes of ~~calculating current~~ a child support ~~under section 518.551~~ order under section 518.713, unless section 518.722, subdivision 3, applies or the court makes specific written findings to overcome this presumption. For purposes of ordering medical support under section 518.719, a ~~custodial~~ parent who has primary physical custody of a child may be an obligor subject to ~~a cost-of-living adjustment under section 518.641 and~~ a payment agreement under section 518.553.

Subd. 9. **Public authority.** "Public authority" means the local unit of government, acting on behalf of the state, that is responsible for child support enforcement or the Department of Human Services, Child Support Enforcement Division.

Subd. 10. **Pension plan benefits or rights.** "Pension plan benefits or rights" means a benefit or right from a public or private pension plan accrued to the end of the month in which marital assets are valued, as determined under the terms of the laws or other plan document provisions governing the plan, including section 356.30.

Subd. 11. **Public pension plan.** "Public pension plan" means a pension plan or fund specified in section 356.20, subdivision 2, or 356.30, subdivision 3, the deferred compensation plan specified in section 352.96, or any retirement or pension plan or fund, including a supplemental retirement plan or fund, established, maintained, or supported by a governmental subdivision or public body whose revenues are derived from taxation, fees, assessments, or from other public sources.

Subd. 12. **Private pension plan.** "Private pension plan" means a plan, fund, or program maintained by an employer or employee organization that provides retirement income to employees or results in a deferral of income by employees for a period extending to the termination of covered employment or beyond.

Subd. 13. **Arrears.** Arrears are amounts that accrue pursuant to an obligor's failure to comply with a support order. Past support and pregnancy and confinement expenses contained in a support order are arrears if the court order does not contain repayment terms. Arrears also arise by the obligor's failure to comply with the terms of a court order for repayment of past support or pregnancy and confinement expenses. An obligor's failure to comply with the terms for repayment of amounts owed for past support or pregnancy and confinement turns the entire amount owed into arrears.

Subd. 14. **IV-D case.** "IV-D case" means a case where a party has assigned to the state rights to child support because of the receipt of public assistance as defined in section 256.741 or has applied for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4).

Subd. 15. **Parental income for <u>determining</u> child support (PICS).** "Parental income for <u>determining</u> child support," or "PICS," means gross income ~~under subdivision 18~~ minus deductions for nonjoint children ~~as~~ allowed ~~by~~ <u>under</u> section 518.717.

Subd. 16. **Apportioned veterans' benefits.** "Apportioned veterans' benefits" means the amount the Veterans Administration deducts from the veteran's award and disburses to the child or the child's representative payee. The apportionment of veterans' benefits shall be that determined by the Veterans Administration and governed by Code of Federal Regulations, title 38, sections 3.450 to 3.458.

Subd. 17. **Basic support.** "Basic support" means the basic support obligation ~~determined by applying the parent's parental income for child support, or if there are two parents, their combined parental income for child support, to the guideline in the manner set out in section 518.725~~ computed under section 518.713. Basic support includes the dollar amount ordered for a child's housing, food, clothing, transportation, and education costs, and other expenses relating to the child's care. Basic support does not include monetary contributions for a child's child care expenses and medical and dental expenses.

Subd. 18. **Gross income.** "Gross income" means~~:~~

~~(1)~~ the gross income of the parent calculated under section 518.7123~~; plus~~

~~(2) Social Security or veterans' benefit payments received on behalf of the child under section 518.718; plus~~

~~(3) the potential income of the parent, if any, as determined in subdivision 23; minus~~

~~(4) spousal maintenance that any party has been ordered to pay; minus~~

~~(5) the amount of any existing child support order for other nonjoint children.~~

Subd. 19. **Joint child.** "Joint child" means the dependent child who is the ~~son or daughter~~ child of both parents in the support proceeding. In ~~those~~ cases where support is sought from only one parent of a child, a joint child is the child for whom support is sought.

Subd. 20. **Nonjoint child.** "Nonjoint child" means the legal child of one, but not both of the parents ~~subject to this determination. Specifically excluded from this definition are~~ in the support proceeding. Nonjoint child does not include stepchildren.

Subd. 21. ~~**Parenting time.** "Parenting time" means the amount of time a child is scheduled to spend with the parent according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. For purposes of section 518.722, the percentage of parenting time may be calculated by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods where the child is in the parent's physical custody, but does not stay overnight.~~

~~Subd. 22.~~ **Payor of funds.** "Payor of funds" means a person or entity that provides funds to an obligor, including an employer as defined under chapter 24, section 3401(d), of the Internal Revenue Code, an independent contractor, payor of workers' compensation benefits or unemployment insurance benefits, or a financial institution as defined in section 13B.06.

~~Subd. 23. **Potential income.** "Potential income" is income determined under this subdivision.~~

~~(a) If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support~~

~~shall be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.~~

~~(b) Determination of potential income shall be made according to one of three methods, as appropriate:~~

~~(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;~~

~~(2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or~~

~~(3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.~~

~~(c) A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that:~~

~~(1) unemployment or underemployment is temporary and will ultimately lead to an increase in income;~~

~~(2) the unemployment or underemployment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or~~

~~(3) the parent is unable to work full time due to a verified disability or due to incarceration.~~

~~(d) As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.~~

~~(e) If the parent of a joint child is a recipient of a temporary assistance to a needy family (TANF) cash grant, no potential income shall be imputed to that parent.~~

~~(f) If a parent stays at home to care for a child who is subject to the child support order, the court may consider the following factors when determining whether the parent is voluntarily unemployed or underemployed:~~

~~(1) the parties' parenting and child care arrangements before the child support action;~~

~~(2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;~~

~~(3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed,~~

~~and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;~~

~~(4) the child's age and health, including whether the child is physically or mentally disabled; and~~

~~(5) the availability of child care providers.~~

~~(g) Paragraph (f) does not apply if the parent stays at home to care for other nonjoint children, only.~~

~~(h) A self-employed parent shall not be considered to be voluntarily unemployed or underemployed if that parent can show that the parent's net self-employment income is lower because of economic conditions.~~

~~Subd. 24.~~ Subd. 22. **Primary physical custody.** The parent having "primary physical custody" means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.

~~Subd. 25.~~ Subd. 23. **Social Security benefits.** "Social Security benefits" means the monthly ~~amount~~ retirement, survivors, or disability insurance benefits that the Social Security Administration ~~pays to~~ provides to a parent for that parent's own benefit or for the benefit of a joint child ~~or the child's representative payee due solely to the disability or retirement of either parent. Benefits paid~~. Social Security benefits do not include Supplemental Security Income benefits that the Social Security Administration provides to a parent for the parent's own benefit or to a parent due to the disability of a child ~~are excluded from this definition~~.

~~Subd. 26. **Split custody.** "Split custody" means that each parent in a two-parent calculation has primary physical custody of at least one of the joint children.~~

~~Subd. 27.~~ Subd. 24. **Survivors' and dependents' educational assistance.** "Survivors' and dependents' educational assistance" are funds disbursed by the Veterans Administration under United States Code, title 38, chapter 35, to the child or the child's representative payee.

Sec. 9. Laws 2005, chapter 164, section 8, is amended to read:

Sec. 8. Minnesota Statutes 2004, section 518.551, subdivision 5b, is amended to read:

Subd. 5b. **Providing income information.** (a) In any case where the parties have joint children for which a child support order must be determined, the parties shall serve and file with their initial pleadings or motion documents, a financial affidavit, disclosing all sources of gross income for purposes of section 518.7123. The financial affidavit shall include relevant supporting documentation necessary to calculate the parental income for

child support under section 518.54, subdivision 15, including, but not limited to, pay stubs for the most recent three months, employer statements, or statements of receipts and expenses if self-employed. Documentation of earnings and income also include relevant copies of each parent's most recent federal tax returns, including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification for the financial affidavit. The commissioner of human services shall prepare a financial affidavit form that must be used by the parties for disclosing information under this subdivision.

(b) In addition to the requirements of paragraph (a), at any time after an action seeking child support has been commenced or when a child support order is in effect, a party or the public authority may require the other party to give them a copy of the party's most recent federal tax returns that were filed with the Internal Revenue Service. The party shall provide a copy of the tax returns within 30 days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause.

(c) If a parent under the jurisdiction of the court does not serve and file the financial affidavit with the parent's initial pleading or motion documents, the court shall set income for that parent based on credible evidence before the court or in accordance with section ~~518.54, subdivision 23~~ 518.7124. Credible evidence may include documentation of current or recent income, testimony of the other parent concerning recent earnings and income levels, and the parent's wage reports filed with the Minnesota Department of Employment and Economic Development under section 268.044.

Sec. 10. Laws 2005, chapter 164, section 10, subdivision 2, is amended to read:

Subd. 2. **Modification.** (a) The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: (1) substantially increased or decreased gross income of an obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee or the child or children that are the subject of these proceedings; (3) receipt of assistance under the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics~~, any of which makes the terms unreasonable and unfair~~; (5) extraordinary medical expenses of the child not provided for under section 518.171; (6) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related

or education-related child care expenses; or (7) upon the emancipation of the child, as provided in section 518.64, subdivision 4a.

(b) It is presumed that there has been a substantial change in circumstances under paragraph (a) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if:

(1) the application of the child support guidelines in section ~~518.551, subdivision 5~~ 518.725, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least $75 per month higher or lower than the current support order or, if the current support order is less than $75, it results in a calculated court order that is at least 20 percent per month higher or lower;

(2) the medical support provisions of the order established under section 518.719 are not enforceable by the public authority or the obligee;

(3) health coverage ordered under section 518.719 is not available to the child for whom the order is established by the parent ordered to provide;

(4) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount; or

(5) the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party.

(c) A child support order is not presumptively modifiable solely because an obligor or obligee becomes responsible for the support of an additional nonjoint child, which is born after an existing order. Section 518.717 shall be considered if other grounds are alleged which allow a modification of support.

(d) On a motion for modification of maintenance, including a motion for the extension of the duration of a maintenance award, the court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under section 518.552 that exist at the time of the motion. On a motion for modification of support, the court:

(1) shall apply section 518.725, and shall not consider the financial circumstances of each party's spouse, if any; and

(2) shall not consider compensation received by a party for employment in excess of a 40-hour work week, provided that the party demonstrates, and the court finds, that:

(i) the excess employment began after entry of the existing support order;

(ii) the excess employment is voluntary and not a condition of employment;

(iii) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;

(iv) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation;

(v) in the case of an obligor, current child support payments are at least equal to the guidelines amount based on income not excluded under this clause; and

(vi) in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

(e) A modification of support or maintenance, including interest that accrued pursuant to section 548.091, may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the public authority if public assistance is being furnished or the county attorney is the attorney of record.

(f) Except for an award of the right of occupancy of the homestead, provided in section 518.63, all divisions of real and personal property provided by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state, including motions under section 518.145, subdivision 2. The court may impose a lien or charge on the divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property as is provided by section 518.24.

(g) The court need not hold an evidentiary hearing on a motion for modification of maintenance or support.

(h) Section 518.14 shall govern the award of attorney fees for motions brought under this subdivision.

(i) Except as expressly provided, an enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order.

(j) There may be no modification of an existing child support order during the first year following the effective date of sections 518.7123 to 518.729 except as follows:

(1) there is at least a 20 percent change in the gross income of the obligor;

(2) there is a change in the number of joint children for whom the obligor is legally responsible and actually supporting;

(3) a parent or another caregiver of the child who is supported by the existing support order begins to receive public assistance, as defined in section 256.741;

(4) there are additional work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses;

(5) there is a change in the availability of health care coverage, as defined in section 518.719, subdivision 1, paragraph (a), or a substantial increase or decrease in the cost of existing health care coverage;

(6) the child supported by the existing child support order becomes disabled; or

~~(4)~~ (7) both parents consent to modification of the existing order ~~in compliance with the new income shares guidelines~~ under section 518.713.

A modification under clause (4) may be granted only with respect to child care support. A modification under clause (5) may be granted only with respect to medical support. This paragraph expires January 1, 2008.

(k) On the first modification ~~under the income shares method of calculation,~~ of a support order that was calculated under the statutory guidelines in effect before January

1, 2007, the court may phase in the modification of basic support ~~may be limited~~ if the ~~amount of the~~ full ~~variance~~ amount of the modification would create an undue hardship for ~~either~~ the obligor or the obligee.

Paragraph (j) expires January 1, 2008.

Sec. 11. Laws 2005, chapter 164, section 11, subdivision 7, is amended to read:

Subd. 7. **Child care exception.** Child care support must be based on the actual child care expenses. The court may provide that a ~~reduction~~ decrease in the amount ~~allocated for~~ of the child care ~~expenses~~ based on a ~~substantial~~ decrease in the actual child care expenses is effective as of the date the expense is decreased.

Sec. 12. Laws 2005, chapter 164, section 14, is amended to read:

Sec. 14. **[518.7123] CALCULATION OF GROSS INCOME.**

(a) ~~Except as excluded below~~ Subject to the exclusions and deductions in this section, gross income includes ~~income from any source~~ any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, ~~advances, bonuses, dividends, severance pay, pensions, interest, honoraria, trust income, annuities, return on capital, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, including lottery winnings, alimony, spousal maintenance payments, income from self-employment or operation of a business, as determined~~ self-employment income under section 518.7125, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child under section 518.718, and potential income under section 518.7124. ~~All salary~~ Salaries, wages, commissions, or other compensation paid by third parties shall be based upon Medicare gross income. No deductions shall be allowed for contributions to pensions, 401-K, IRA, or other retirement benefits.

(b) ~~Excluded and not counted in~~ Gross income ~~is~~ does not include compensation received by a party for employment in excess of a 40-hour work week, provided that:

(1) child support is ~~nonetheless~~ ordered in an amount at least equal to the guideline amount based on gross income not excluded under this clause; and

(2) the party demonstrates, and the court finds, that:

(i) the excess employment began after the filing of the petition for dissolution or legal separation or a petition or motion related to custody, parenting time, or support;

(ii) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;

(iii) the excess employment is voluntary and not a condition of employment;

(iv) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and

(v) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

(c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they reduce personal living expenses.

(d) Gross income may be calculated on either an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying the weekly income by 4.33.

(e) ~~Excluded and not counted as~~ Gross income ~~is any~~ does not include a child support payment received by a party. It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are ~~excluded and~~ not ~~counted as~~ gross income.

(f) ~~Excluded and not counted as~~ Gross income ~~is~~ does not include the income of the obligor's spouse and the obligee's spouse.

(g) Child support or spousal maintenance payments ordered by a court for a nonjoint child or former spouse or ordered payable to the other party as part of the current proceeding are deducted from other periodic payments received by a party for purposes of determining gross income.

Sec. 13. Laws 2005, chapter 164, section 15, is amended to read:

Sec. 15. **[518.7125] INCOME FROM SELF-EMPLOYMENT OR OPERATION OF A BUSINESS.**

For purposes of section 518.7123, income from self-employment~~, rent, royalties, proprietorship~~ or operation of a business, ~~or~~ including joint ownership of a partnership or closely held corporation, ~~gross income~~ is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support. The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary.

Sec. 14. Laws 2005, chapter 164, section 16, is amended to read:

Sec. 16. **[518.713] COMPUTATION OF CHILD SUPPORT OBLIGATIONS.**

(a) To determine the presumptive ~~amount of~~ child support ~~owed by~~ obligation of a parent, the court shall follow the procedure set forth in this section~~:~~.

(b) To determine the obligor's basic support obligation, the court shall:

(1) determine the gross income of each parent ~~using the definition in section 518.54, subdivision 18~~ under section 518.7123;

(2) calculate the parental income for determining child support (PICS) of each parent ~~under section 518.54, subdivision 15~~, by subtracting from the gross income the credit, if any, for each parent's nonjoint children under section 518.717;

(3) determine the percentage contribution of each parent to the combined PICS by dividing the combined PICS into each parent's PICS;

(4) determine the combined basic support obligation by application of the ~~schedule~~ guidelines in section 518.725;

(5) determine ~~each parent's~~ the obligor's share of the basic support obligation by multiplying the percentage figure from clause (3) by the combined basic support obligation in clause (4); and

(6) determine the parenting expense adjustment, if any, as provided in section 518.722, and adjust ~~that parent's~~ the obligor's basic support obligation accordingly~~;~~. If the parenting time of the parties is presumed equal, section 518.722, subdivision 3, applies to the calculation of the basic support obligation and a determination of which parent is the obligor.

~~(7)~~ (c) The court shall determine the child care support obligation for ~~each parent~~ the obligor as provided in section 518.72~~;~~.

~~(8)~~ (d) The court shall determine the ~~health care coverage~~ medical support obligation for each parent as provided in section 518.719. Unreimbursed and uninsured medical expenses are not included in the presumptive amount of support owed by a parent and are calculated and collected as described in section ~~518.722;~~ 518.719.

~~(9)~~ (e) The court shall determine each parent's total child support obligation by adding together each parent's basic support, child care support, and health care coverage obligations as provided in ~~clauses (1) to (8);~~

~~(10) reduce or increase each parent's total child support obligation by the amount of the health care coverage contribution paid by or on behalf of the other parent, as provided in section 518.719, subdivision 5;~~ this section.

~~(11)~~ (f) If Social Security benefits or veterans' benefits are received by one parent as a representative payee for a joint child ~~due to the other parent's disability or retirement,~~

based on the other parent's eligibility, the court shall subtract the amount of benefits from the other parent's net child support obligation, if any;.

~~(12) apply the self-support adjustment and minimum support obligation provisions as provided in section 518.724; and~~

~~(13)~~ (g) The final child support order shall separately designate the amount owed for basic support, child care support, and medical support. If applicable, the court shall use the self-support adjustment and minimum support adjustment under section 518.724 to determine the obligor's child support obligation.

Sec. 15. Laws 2005, chapter 164, section 17, subdivision 1, is amended to read:

Subdivision 1. **General factors.** Among other reasons, deviation from the presumptive ~~guideline amount~~ child support obligation computed under section 518.713 is intended to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty. In addition to the child support guidelines and other factors used to calculate the child support obligation under section 518.713, the court must take into consideration the following factors in setting or modifying child support or in determining whether to deviate upward or downward from the ~~guidelines~~ presumptive child support obligation:

(1) all earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of section 518.7123, paragraph (b)~~, clause (2)~~;

(2) the extraordinary financial needs and resources, physical and emotional condition, and educational needs of the child to be supported;

(3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

(4) which parent receives the income taxation dependency exemption and the financial benefit the parent receives from it;

(5) the parents' debts as provided in subdivision 2; and

(6) the obligor's total payments for court-ordered child support exceed the limitations set forth in section 571.922.

Sec. 16. Laws 2005, chapter 164, section 18, is amended to read:

Sec. 18. **[518.715] WRITTEN FINDINGS.**

Subdivision 1. **No deviation.** If the court does not deviate from the ~~guidelines~~ presumptive child support obligation computed under section 518.713, the court must

make written findings ~~concerning the amount of the parties' gross income used as the basis for the guidelines calculation and~~ that state:

(1) each parent's gross income;

(2) each parent's PICS; and

(3) any other significant evidentiary factors affecting the child support determination.

Subd. 2. **Deviation.** ~~(a)~~ If the court deviates from the ~~guidelines by agreement of the parties or pursuant to~~ presumptive child support obligation computed under section ~~518.714~~ 518.713, the court must make written findings ~~giving~~ that state:

(1) each parent's gross income;

(2) each parent's PICS;

(3) the amount of the child support ~~calculated~~ obligation computed under ~~the guidelines;~~ section 518.713;

(4) the reasons for the deviation~~;~~; and ~~must specifically address~~

(5) how the deviation serves the best interests of the child~~; and~~.

~~(b) determine each parent's gross income and PICS.~~

Subd. 3. **Written findings required in every case.** The provisions of this section apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The court must review stipulations presented to it for conformity ~~to the guidelines~~ with section 518.713. The court is not required to conduct a hearing, but the parties must provide sufficient documentation to verify the child support determination~~;~~ and to justify any deviation ~~from the guidelines~~.

Sec. 17. Laws 2005, chapter 164, section 20, is amended to read:

Sec. 20. **[518.717] DEDUCTION FROM INCOME FOR NONJOINT CHILDREN.**

(a) When either or both parents ~~of the joint child subject to this determination~~ are legally responsible for a nonjoint child ~~who resides in that parent's household~~, a ~~credit~~ deduction for this obligation shall be calculated under this section if:

(1) the nonjoint child primarily resides in the parent's household; and

(2) the parent is not obligated to pay basic child support for the nonjoint child to the other parent or a legal custodian of the child under an existing child support order.

(b) ~~Determine the gross income for each parent under section 518.54, subdivision 18.~~

~~(c) Using~~ The court shall use the ~~guideline as established in~~ guidelines under section 518.725~~;~~ to determine the basic child support obligation for the nonjoint child or children ~~who actually reside in the parent's household,~~ by using the gross income of the parent for whom the ~~credit~~ deduction is being calculated~~;~~ and ~~using~~ the number of nonjoint children ~~actually~~ primarily residing in the parent's ~~immediate~~ household. If the number of nonjoint children to be used for the determination is greater than two, the determination ~~shall~~ must be made using the number two instead of the greater number.

~~(d)~~ (c) The ~~credit~~ deduction for nonjoint children ~~shall be~~ is 50 percent of the guideline amount ~~from~~ determined under paragraph ~~(c)~~ (b).

Sec. 18. Laws 2005, chapter 164, section 21, is amended to read:

Sec. 21. **[518.718] SOCIAL SECURITY OR VETERANS' BENEFIT PAYMENTS RECEIVED ON BEHALF OF THE CHILD.**

(a) The amount of the monthly Social Security benefits or apportioned veterans' benefits ~~received by the child or on behalf of the~~ provided for a joint child shall be ~~added to~~ included in the gross income of the parent ~~for whom the disability or retirement benefit was paid~~ on whose eligibility the benefits are based.

(b) The amount of the monthly survivors' and dependents' educational assistance ~~received by the child or on behalf of the~~ provided for a joint child shall be ~~added to~~ included in the gross income of the parent ~~for whom the disability or retirement benefit was paid~~ on whose eligibility the benefits are based.

(c) If ~~the~~ Social Security or apportioned veterans' benefits are ~~paid on behalf~~ provided for a joint child based on the eligibility of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits ~~may~~ shall also be subtracted from the obligor's net child support obligation as calculated pursuant to section 518.713.

(d) If the survivors' and dependents' educational assistance is ~~paid on behalf~~ provided for a joint child based on the eligibility of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's net child support obligation as calculated ~~pursuant to~~ under section 518.713.

Sec. 19. Laws 2005, chapter 164, section 22, subdivision 2, is amended to read:

Subd. 2. **Order.** (a) A completed national medical support notice issued by the public authority or a court order that complies with this section is a qualified medical child support order under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a).

(b) Every order addressing child support must state:

(1) the names, last known addresses, and Social Security numbers of the parents and the joint child that is a subject of the order unless the court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan;

(2) whether appropriate health care coverage for the joint child is available and, if so, state:

(i) which ~~party~~ parent must carry health care coverage;

(ii) the cost of premiums and how the cost is allocated between the ~~parties~~ parents;

(iii) how unreimbursed expenses will be allocated and collected by the ~~parties~~ parents; and

(iv) the circumstances, if any, under which the obligation to provide health care coverage for the joint child will shift from one ~~party~~ parent to the other; and

(3) if appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required~~; and~~.

~~(4) whether the amount ordered for medical support is subject to a cost-of-living adjustment under section 518.641.~~

Sec. 20. Laws 2005, chapter 164, section 22, subdivision 3, is amended to read:

Subd. 3. [DETERMINING APPROPRIATE HEALTH CARE COVERAGE.] (a) In determining whether a ~~party~~ parent has appropriate health care coverage for the joint child, the court must evaluate the health plan using the following factors:

(1) accessible coverage. Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:

(i) primary care coverage is available within 30 minutes or 30 miles of the joint child's residence and specialty care coverage is available within 60 minutes or 60 miles of the joint child's residence;

(ii) the coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and

(iii) no preexisting conditions exist to delay coverage unduly;

(2) comprehensive coverage. Dependent health care coverage is presumed comprehensive if it includes~~, at a minimum,~~ medical and hospital coverage and provides for preventive, emergency, acute, and chronic care. If both ~~parties~~ parents have health care coverage that meets the minimum requirements, the court must determine which health care coverage is more comprehensive by considering whether the coverage includes:

(i) basic dental coverage;

(ii) orthodontia;

(iii) eyeglasses;

(iv) contact lenses;

(v) mental health services; or

(vi) substance abuse treatment;

(3) affordable coverage. Dependent health care coverage is affordable if it is reasonable in cost; and

(4) the joint child's special medical needs, if any.

(b) If both ~~parties~~ parents have health care coverage available for a joint child, and the court determines under paragraph (a), clauses (1) and (2), that the available coverage is comparable with regard to accessibility and comprehensiveness, the least costly health care coverage is the presumed appropriate health care coverage for the joint child.

Sec. 21. Laws 2005, chapter 164, section 22, subdivision 4, is amended to read:

Subd. 4. **Ordering health care coverage.** (a) If a joint child is presently enrolled in health care coverage, the court must order that the parent who currently has the joint child enrolled continue that enrollment unless the ~~parties~~ parents agree otherwise or a ~~party~~ parent requests a change in coverage and the court determines that other health care coverage is more appropriate.

(b) If a joint child is not presently enrolled in health care coverage, upon motion of a ~~party~~ parent or the public authority, the court must determine whether one or both ~~parties~~ parents have appropriate health care coverage for the joint child and order the ~~party~~ parent with appropriate health care coverage available to carry the coverage for the joint child.

(c) If only one ~~party~~ parent has appropriate health care coverage available, the court must order that ~~party~~ parent to carry the coverage for the joint child.

(d) If both ~~parties~~ parents have appropriate health care coverage available, the court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:

(1) either ~~party~~ parent expresses a preference for coverage available through the parent with whom the joint child does not reside;

(2) the parent with whom the joint child does not reside is already carrying dependent health care coverage for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or

(3) the parents agree to provide coverage and agree on the allocation of costs.

(e) If the exception in paragraph (d), clause (1) or (2), applies, the court must determine which ~~party~~ parent has the most appropriate coverage available and order that ~~party~~ parent to carry coverage for the joint child. If the court determines under subdivision

3, paragraph (a), clauses (1) and (2), that the ~~parties'~~ parents' health care coverage for the joint child is comparable with regard to accessibility and comprehensiveness, the court must presume that the ~~party~~ parent with the least costly health care coverage to carry coverage for the joint child.

(f) If neither ~~party~~ parent has appropriate health care coverage available, the court must order the parents to:

(1) contribute toward the actual health care costs of the joint children based on a pro rata share; or

(2) if the joint child is receiving any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of medical assistance under chapter 256B or MinnesotaCare under chapter 256L. The amount of contribution of the noncustodial parent is the amount the noncustodial parent would pay for the child's premiums if the noncustodial parent's PICS income meets the eligibility requirements for public coverage. For purposes of determining the premium amount, the noncustodial parent's household size is equal to one parent plus the child or children who are the subject of the child support order. If the noncustodial parent's PICS income exceeds the eligibility requirements for public coverage, the court must order the noncustodial parent's contribution toward the full premium cost of the child's or children's coverage. The custodial parent's obligation is determined under the requirements for public coverage as set forth in chapter 256B or 256L. The court may order the parent with whom the child resides to apply for public coverage for the child.

~~(g) A presumption of no less than $50 per month must be applied to the actual health care costs of the joint children or to the cost of health care coverage.~~

~~(h)~~ (g) The commissioner of human services must publish a table with the premium schedule for public coverage and update the chart for changes to the schedule by July 1 of each year.

Sec. 22. Laws 2005, chapter 164, section 22, subdivision 16, is amended to read:

Subd. 16. ~~**Income withholding;**~~ **Offset.** (a) If a party ~~owes no joint child support obligation for a child~~ is the parent with primary physical custody as defined in section

518.54, subdivision 24, and is an obligor ordered to contribute to the other party's cost for carrying health care coverage for the joint child, the ~~obligor~~ other party's child support obligation is subject to an offset under subdivision 5 ~~or income withholding under section 518.6111~~.

~~(b) If a party's court-ordered health care coverage for the joint child terminates and the joint child is not enrolled in other health care coverage or public coverage, and a modification motion is not pending, the public authority may remove the offset to a party's child support obligation or terminate income withholding instituted against a party under section 518.6111. The public authority must provide notice to the parties of the action.~~

(b) The public authority, if the public authority provides services, may remove the offset to a party's child support obligation when:

(1) the party's court-ordered health care coverage for the joint child terminates;

(2) the party does not enroll the joint child in other health care coverage; and

(3) a modification motion is not pending.

The public authority must provide notice to the parties of the action.

(c) A party may contest the public authority's action to remove the offset to the child support obligation ~~or terminate income withholding~~ if the party makes a written request for a hearing within 30 days after receiving written notice. If a party makes a timely request for a hearing, the public authority must schedule a hearing and send written notice of the hearing to the parties by mail to the parties' last known addresses at least 14 days before the hearing. The hearing must be conducted in district court or in the expedited child support process if section 484.702 applies. The district court or child support magistrate must determine whether removing the offset ~~or terminating income withholding~~ is appropriate and, if appropriate, the effective date for the removal ~~or termination~~.

(d) If the party does not request a hearing, the ~~district court or child support magistrate must order the offset or income withholding termination~~ public authority will remove the offset effective the first day of the month following termination of the joint child's health care coverage.

Sec. 23. Laws 2005, chapter 164, section 22, subdivision 17, is amended to read:

Subd. 17. **Collecting unreimbursed ~~and~~ or uninsured medical expenses.** (a) This subdivision and subdivision 18 apply when a court order has determined and ordered the parties' proportionate share and responsibility to contribute to unreimbursed or uninsured medical expenses.

(b) A party requesting reimbursement of unreimbursed or uninsured medical expenses must initiate a request ~~for reimbursement of unreimbursed and uninsured medical expenses~~ to the other party within two years of the date that the requesting party incurred the unreimbursed or uninsured medical expenses. ~~The time period in this paragraph does not apply if the location of the other party is unknown.~~ If a court order has been signed ordering the contribution towards unreimbursed or uninsured expenses, a two-year limitations provision must be applied to any requests made on or after January 1, 2007. The provisions of this section apply retroactively to court orders signed before January 1, 2007. Requests for unreimbursed or uninsured expenses made on or after January 1, 2007, may include expenses incurred before January 1, 2007, and on or after January 1, 2005.

~~(b)~~ (c) A requesting party ~~seeking reimbursement of unreimbursed and uninsured medical expenses~~ must mail a written notice of intent to collect the unreimbursed or uninsured medical expenses and a copy of an affidavit of health care expenses to the other party at the other party's last known address.

~~(c)~~ (d) The written notice must include a statement that the other party has 30 days from the date the notice was mailed to (1) pay in full; (2) ~~enter~~ agree to a payment ~~agreement~~ schedule; or (3) file a motion requesting a hearing ~~contesting the matter~~ to contest the amount due or to set a court-ordered monthly payment amount. If the public authority provides ~~support enforcement~~ services, the written notice also must include a statement that, if the other party does not respond within the 30 days, the requesting party ~~must~~ may submit the amount due to the public authority for collection.

~~(d)~~ (e) The affidavit of health care expenses must itemize and document the joint child's unreimbursed or uninsured medical expenses and include copies of all bills, receipts, and insurance company explanations of benefits.

(f) If the other party does not respond to the request for reimbursement within 30 days, the requesting party may commence enforcement against the other party under subdivision 18; file a motion for a court-ordered monthly payment amount under paragraph (h); or notify the public authority, if the public authority provides services, that the other party has not responded.

~~(e)~~ ~~If~~ (g) The notice to the public authority ~~provides support enforcement services, the party seeking reimbursement must send to the public authority~~ must include: a copy of

the written notice, a copy of the ~~original~~ affidavit of health care expenses, and copies of all bills, receipts, and insurance company explanations of benefits.

~~(f) If the party does not respond to the request for reimbursement within 30 days, the party seeking reimbursement or public authority, if the public authority provides support enforcement services, must commence an enforcement action against the party under subdivision 18.~~

~~(g)~~ (h) If noticed under paragraph (f), the public authority must serve the other party with a notice of intent to enforce unreimbursed and uninsured medical expenses and file an affidavit of service by mail with the district court administrator. The notice must state that~~, unless~~ the other party has 14 days to (1) ~~pays~~ pay in full; or (2) ~~enters into a payment agreement; or (3) files~~ file a motion ~~contesting~~ to contest the ~~matter within 14 days of service of the notice,~~ amount due or to set a court-ordered monthly payment amount. The notice must also state that if there is no response within 14 days, the public authority will commence enforcement of the expenses as ~~medical support~~ arrears under subdivision 18.

~~(h) If the~~ (i) To contest the amount due or set a court-ordered monthly payment amount, a party ~~files~~ must file a timely motion ~~for a hearing contesting the requested reimbursement, the contesting party must~~ and schedule a hearing in district court or in the expedited child support process if section 484.702 applies. The ~~contesting~~ moving party must provide the other party ~~seeking reimbursement~~ and the public authority, if the public authority provides ~~support enforcement~~ services, with written notice ~~of the hearing~~ at least 14 days before the hearing by mailing notice of the hearing to the public authority and to the requesting party at the requesting party's last known address. The moving party ~~seeking reimbursement~~ must file the ~~original~~ affidavit of health care expenses with the court at least five days before the hearing. ~~Based upon the evidence presented,~~ The district court or child support magistrate must determine liability for the expenses and order that the liable party is subject to enforcement of the expenses as ~~medical support~~ arrears under subdivision 18 or set a court-ordered monthly payment amount.

Sec. 24. Laws 2005, chapter 164, section 22, subdivision 18, is amended to read:

Subd. 18. **Enforcing ~~an order for~~ unreimbursed or uninsured medical ~~support~~ expenses as arrears.** (a) ~~If a party liable for~~ Unreimbursed ~~and~~ or uninsured medical expenses ~~owes a child support obligation to the party seeking reimbursement of the~~

~~expenses, the expenses must be~~ enforced under this subdivision are collected as ~~medical support~~ arrears.

~~(b) If a party liable for unreimbursed and uninsured medical expenses does not owe a child support obligation to the party seeking reimbursement, and the party seeking reimbursement owes the liable party basic support arrears, the liable party's medical support arrears must be deducted from the amount of the basic support arrears.~~

~~(c) If a liable party owes medical support arrears after deducting the amount owed from the amount of the child support arrears owed by the party seeking reimbursement, it must be collected as follows:~~

~~(1) if the party seeking reimbursement owes a child support obligation to the liable party, the child support obligation must be reduced by 20 percent until the medical support arrears are satisfied;~~

~~(2) if the party seeking reimbursement does not owe a child support obligation to the liable party, the liable party's income must be subject to income withholding under section 518.6111 for an amount required under section 518.553 until the medical support arrears are satisfied; or~~

~~(3) if the party seeking reimbursement does not owe a child support obligation, and income withholding under section 518.6111 is not available, payment of the medical support arrears must be required under a payment agreement under section 518.553.~~

~~(d) If a liable party fails to enter into or comply with a payment agreement, the party seeking reimbursement or the public authority, if it provides support enforcement services, may schedule a hearing to have a court order payment. The party seeking reimbursement or the public authority must provide the liable party with written notice of the hearing at least 14 days before the hearing.~~

(b) If the liable party is the parent with primary physical custody as defined in section 518.54, subdivision 24, the unreimbursed or uninsured medical expenses must be deducted from any arrears the requesting party owes the liable party. If unreimbursed or uninsured expenses remain after the deduction, the expenses must be collected as follows:

(1) If the requesting party owes a current child support obligation to the liable party, 20 percent of each payment received from the requesting party must be returned to the

requesting party. The total amount returned to the requesting party each month must not exceed 20 percent of the current monthly support obligation.

(2) If the requesting party does not owe current child support or arrears, a payment agreement under section 518.553 is required. If the liable party fails to enter into or comply with a payment agreement, the requesting party or the public authority, if the public authority provides services, may schedule a hearing to set a court-ordered payment. The requesting party or the public authority must provide the liable party with written notice of the hearing at least 14 days before the hearing.

(c) If the liable party is not the parent with primary physical custody as defined in section 518.54, subdivision 24, the unreimbursed or uninsured medical expenses must be deducted from any arrears the requesting party owes the liable party. If unreimbursed or uninsured expenses remain after the deduction, the expenses must be added and collected as arrears owed by the liable party.

Sec. 25. Laws 2005, chapter 164, section 23, subdivision 1, is amended to read:

Subdivision 1. **Child care costs.** Unless otherwise agreed to by the parties and approved by the court, the court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly ~~parental income for determining child support~~ PICS. Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of a joint child. The Department of Human Services shall develop tables to calculate the applicable credit based upon the custodial parent's ~~parental income for determining child support~~ PICS.

Sec. 26. Laws 2005, chapter 164, section 23, subdivision 2, is amended to read:

Subd. 2. **Low-income obligor.** (a) If the obligor's ~~parental income for determining child support~~ PICS meets the income eligibility requirements for child care assistance under the basic sliding fee program under chapter 119B, the court must order the obligor to pay the lesser of the following amounts:

(1) the amount of the obligor's monthly co-payment for child care assistance under the basic sliding fee schedule established by the commissioner of education under chapter 119B, based on an obligor's monthly ~~parental income for determining child support~~ PICS and the size of the obligor's household provided that the obligee is actually receiving child care assistance under the basic sliding fee program. For purposes of this subdivision, the obligor's household includes the obligor and the number of joint children for whom child support is being ordered; or

(2) the amount of the obligor's child care obligation under subdivision 1.

(b) The commissioner of human services must publish a table with the child care assistance basic sliding fee amounts and update the table for changes to the basic sliding fee schedule by July 1 of each year.

Sec. 27. Laws 2005, chapter 164, section 24, is amended to read:

Sec. 24. **[518.722] PARENTING EXPENSE ADJUSTMENT.**

Subdivision 1. **General.** (a) ~~This section shall apply when the amount of parenting time granted to an obligor is ten percent or greater.~~ The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses. Every child support order shall specify the ~~total percent~~ percentage of parenting time granted to or presumed for each parent. For purposes of this section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

(b) If there is not a court order awarding parenting time, the court shall presume that the percentage of parenting time allowed to the obligor for purposes of this section is 25 percent unless the parties stipulate to a different percentage or the court finds that this presumption is not in the best interests of the child. If parenting time is subsequently established by the court, the court may modify the child support award to reflect the percentage of parenting time established by the order.

Subd. 2. **Calculation of parenting expense adjustment.** ~~(b)~~ The obligor ~~shall be~~ is entitled to a parenting expense adjustment calculated as ~~follows~~ provided in this subdivision. The court shall:

(1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor below:

	Percentage Range of Parenting Time	Adjustment Percentage
(i)	less than 10 percent	no adjustment

(ii)	10 percent to 45 percent	12 percent
(iii)	45.1 percent to 50 percent	presume parenting time is equal

(2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment.; and

~~(c)~~ (3) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after parenting expense adjustment.

Subd. 3. **Calculation of basic support when parenting time presumed equal.**

~~(d)~~ (a) If the parenting time is equal~~, the expenses for the children are equally shared,~~ and the parental incomes for determining child support of the parents also are equal, no basic support shall be paid unless the court determines that the expenses for the child are not equally shared.

~~(e)~~ (b) If the parenting time is equal but the parents' parental incomes for determining child support are not equal, the parent having the greater parental income for determining child support shall be obligated for basic child support, calculated as follows:

(1) multiply the combined basic support calculated under section 518.713 by ~~1.5~~ 0.75;

(2) prorate the ~~basic child support obligation~~ amount under clause (1) between the parents~~;~~ based on each parent's proportionate share of the combined PICS; and

(3) subtract the lower amount from the higher amount ~~and divide the balance in half; and~~.

~~(3)~~ The resulting figure is the obligation after parenting expense adjustment for the parent with the greater ~~adjusted gross~~ parental income for determining child support.

~~(f) This parenting expense adjustment reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses.~~

~~(g) In the absence of other evidence, there is a rebuttable presumption that each parent has 25 percent of the parenting time for each joint child.~~

Sec. 28. Laws 2005, chapter 164, section 25, is amended to read:

Sec. 25. **[518.724] ABILITY TO PAY; SELF-SUPPORT ADJUSTMENT.**

Subdivision 1. **Ability to pay.** (a) It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, the court shall follow the procedure set out in this section.:

~~(1)~~ (b) The court shall calculate the obligor's income available for support by subtracting a monthly self-support reserve equal to 120 percent of the federal poverty

guidelines for one person from the obligor's gross income~~;~~. If the obligor's income available for support calculated under this paragraph is equal to or greater than the obligor's support obligation calculated under section 518.713, the court shall order child support under section 518.713.

~~(2) compare the obligor's income available for support from clause (1) to the amount of support calculated as per section 518.713, clauses (1) to (15). The amount of child support that is presumed to be correct, as defined in section 518.713, is the lesser of these two amounts;~~

~~(3) this section does not apply to an incarcerated obligor;~~

~~(4) if the obligor's child support is reduced under clause (2);~~ (c) If the obligor's income available for support calculated under paragraph (b) is more than the minimum support amount under subdivision 2, but less than the guideline amount under section 518.713, then the court ~~must~~ shall apply ~~the~~ a reduction to the child support obligation in the following order, until the support order is equal to the obligor's income available for support:

~~(i)~~ (1) medical support obligation;

~~(ii)~~ (2) child ~~support~~ care support obligation; and

~~(iii)~~ (3) basic support obligation~~; and~~.

(d) If the obligor's income available for support calculated under paragraph (b) is equal to or less than the minimum support amount under subdivision 2 or if the obligor's PICS income is less than 120 percent of the federal poverty guidelines for one person, the minimum support amount under subdivision 2 applies.

~~(5)~~ Subd. 2. **Minimum basic support amount.** (a) If the ~~obligor's income available for support is less than the self-support reserve~~ basic support amount applies, ~~then~~ the court must order the following amount as the minimum basic support ~~as follows~~ obligation:

~~(i)~~ (1) for one or two children, the obligor's basic support obligation is $50 per month;

~~(ii)~~ (2) for three or four children, the obligor's basic support obligation is $75 per month; and

~~(iii)~~ (3) for five or more children, the obligor's basic support obligation is $100 per month.

(b) If the court orders the obligor to pay the minimum basic support amount under this ~~paragraph~~ subdivision, the obligor is presumed unable to pay child care support and medical support.

If the court finds the obligor receives no income and completely lacks the ability to earn income, the minimum basic support amount under this ~~paragraph~~ subdivision does not apply.

Subd. 3. **Exception.** This section does not apply to an obligor who is incarcerated.

Sec. 29. Laws 2005, chapter 164, section 26, subdivision 2, as amended by Laws 2005, First Special Session chapter 7, section 27, subdivision 2, is amended to read:

Subd. 2. **Basic support; guideline.** Unless otherwise agreed to by the parents and approved by the court, when establishing basic support, the court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support~~, as determined under section 518.54, subdivision 15~~ (PICS). Basic support must be computed using the following guideline:

Combined Parental Income for Determining Child Support	Number of Children					
	One	Two	Three	Four	Five	Six
$0- $799	$50	$50	$75	$75	$100	$100
800-899	80	129	149	173	201	233
900-999	90	145	167	194	226	262
1,000- 1,099	116	161	186	216	251	291
1,100- 1,199	145	205	237	275	320	370
1,200- 1,299	177	254	294	341	396	459
1,300- 1,399	212	309	356	414	480	557
1,400- 1,499	251	368	425	493	573	664
1,500- 1,599	292	433	500	580	673	780
1,600- 1,699	337	502	580	673	781	905
1,700- 1,799	385	577	666	773	897	1,040
1,800- 1,899	436	657	758	880	1,021	1,183
1,900- 1,999	490	742	856	994	1,152	1,336
2,000- 2,099	516	832	960	1,114	1,292	1,498
2,100- 2,199	528	851	981	1,139	1,320	1,531
2,200- 2,299	538	867	1,000	1,160	1,346	1,561
2,300- 2,399	546	881	1,016	1,179	1,367	1,586
2,400- 2,499	554	893	1,029	1,195	1,385	1,608
2,500- 2,599	560	903	1,040	1,208	1,400	1,625
2,600- 2,699	570	920	1,060	1,230	1,426	1,655
2,700- 2,799	580	936	1,078	1,251	1,450	1,683
2,800- 2,899	589	950	1,094	1,270	1,472	1,707
2,900- 2,999	596	963	1,109	1,287	1,492	1,730
3,000- 3,099	603	975	1,122	1,302	1,509	1,749
3,100- 3,199	613	991	1,141	1,324	1,535	1,779
3,200- 3,299	623	1,007	1,158	1,344	1,558	1,807

3,300- 3,399	~~632~~ 636	1,021	1,175	1,363	1,581	1,833
3,400- 3,499	~~640~~ 650	1,034	1,190	1,380	1,601	1,857
3,500- 3,599	~~648~~ 664	1,047	1,204	1,397	1,621	1,880
3,600- 3,699	~~657~~ 677	1,062	1,223	1,418	1,646	1,909
3,700- 3,799	~~667~~ 691	1,077	1,240	1,439	1,670	1,937
3,800- 3,899	~~676~~ 705	1,081	1,257	1,459	1,693	1,963
3,900- 3,999	~~684~~ 719	1,104	1,273	1,478	1,715	1,988
4,000- 4,099	~~692~~ 732	1,116	1,288	1,496	1,736	2,012
4,100- 4,199	~~701~~ 746	1,132	1,305	1,516	1,759	2,039
4,200- 4,299	~~710~~ 760	1,147	1,322	1,536	1,781	2,064
4,300- 4,399	~~718~~ 774	1,161	1,338	1,554	1,802	2,088
4,400- 4,499	~~726~~ 787	1,175	1,353	1,572	1,822	2,111
4,500- 4,599	~~734~~ 801	1,184	1,368	1,589	1,841	2,133
4,600- 4,699	~~743~~ 808	1,200	1,386	1,608	1,864	2,160
4,700- 4,799	~~753~~ 814	1,215	1,402	1,627	1,887	2,186
4,800- 4,899	~~762~~ 820	1,231	1,419	1,645	1,908	2,212
4,900- 4,999	~~771~~ 825	1,246	1,435	1,663	1,930	2,236
5,000- 5,099	~~780~~ 831	1,260	1,450	1,680	1,950	2,260
5,100- 5,199	~~788~~ 837	1,275	1,468	1,701	1,975	2,289
5,200- 5,299	~~797~~ 843	1,290	1,485	1,722	1,999	2,317
5,300- 5,399	~~805~~ 849	1,304	1,502	1,743	2,022	2,345
5,400- 5,499	~~812~~ 854	1,318	1,518	1,763	2,046	2,372
5,500- 5,599	~~820~~ 860	1,331	1,535	1,782	2,068	2,398
5,600- 5,699	~~829~~ 866	1,346	1,551	1,801	2,090	2,424
5,700- 5,799	~~838~~ 873	1,357	1,568	1,819	2,111	2,449
5,800- 5,899	~~847~~ 881	1,376	1,583	1,837	2,132	2,473
5,900- 5,999	~~856~~ 888	1,390	1,599	1,855	2,152	2,497
6,000- 6,099	~~864~~ 895	1,404	1,604	1,872	2,172	2,520
6,100- 6,199	~~874~~ 902	1,419	1,631	1,892	2,195	2,546
6,200- 6,299	~~883~~ 909	1,433	1,645	1,912	2,217	2,572
6,300- 6,399	~~892~~ 916	1,448	1,664	1,932	2,239	2,597
6,400- 6,499	~~901~~ 923	1,462	1,682	1,951	2,260	2,621
6,500- 6,599	~~910~~ 930	1,476	1,697	1,970	2,282	2,646
6,600- 6,699	~~919~~ 936	1,490	1,713	1,989	2,305	2,673
6,700- 6,799	~~927~~ 943	1,505	1,730	2,009	2,328	2,700
6,800- 6,899	~~936~~ 950	1,519	1,746	2,028	2,350	2,727
6,900- 6,999	~~944~~ 957	1,533	1,762	2,047	2,379	~~2,753~~ 2,747
7,000- 7,099	~~952~~ 963	1,547	1,778	2,065	2,394	~~2,779~~ 2,753
7,100- 7,199	~~961~~ 970	1,561	1,795	2,085	2,417	~~2,805~~ 2,758
7,200- 7,299	~~971~~ 974	1,574	1,812	2,104	2,439	~~2,830~~ 2,764
7,300- 7,399	980	1,587	1,828	2,123	2,462	~~2,854~~ 2,769

7,400- 7,499	989	1,600	1,844	2,142	2,483	~~2,879~~ 2,775
7,500- 7,599	998	1,613	1,860	2,160	2,505	~~2,903~~ 2,781
7,600- 7,699	1,006	1,628	1,877	2,180	2,528	~~2,929~~ 2,803
7,700- 7,799	1,015	1,643	1,894	2,199	2,550	~~2,955~~ 2,833
7,800- 7,899	1,023	1,658	1,911	2,218	2,572	~~2,981~~ 2,864
7,900- 7,999	1,032	1,673	1,928	2,237	2,594	~~3,007~~ 2,894
8,000- 8,099	1,040	1,688	1,944	2,256	2,616	~~3,032~~ 2,925
8,100- 8,199	1,048	1,703	1,960	2,274	2,637	~~3,057~~ 2,955
8,200- 8,299	1,056	1,717	1,976	2,293	2,658	~~3,082~~ 2,985
8,300 -8,399	1,064	1,731	1,992	2,311	2,679	~~3,106~~ 3,016
8,400- 8,499	1,072	1,746	2,008	2,328	2,700	~~3,130~~ 3,046
8,500- 8,599	1,080	1,760	2,023	2,346	2,720	~~3,154~~ 3,077
8,600- 8,699	1,092	1,780	2,047	2,374	2,752	~~3,191~~ 3,107
8,700- 8,799	1,105	1,801	2,071	2,401	2,784	~~3,228~~ 3,138
8,800- 8,899	1,118	1,822	2,094	2,429	2,816	~~3,265~~ 3,168
8,900- 8,999	1,130	1,842	2,118	2,456	2,848	~~3,302~~ 3,199
9,000- 9,099	1,143	1,863	2,142	2,484	2,880	~~3,339~~ 3,223
9,100- 9,199	1,156	1,884	2,166	2,512	2,912	~~3,376~~ 3,243
9,200- 9,299	1,168	1,904	2,190	2,539	2,944	~~3,413~~ 3,263
9,300- 9,399	1,181	1,925	2,213	2,567	2,976	~~3,450~~ 3,284
9,400- 9,499	1,194	1,946	2,237	2,594	3,008	~~3,487~~ 3,304
9,500- 9,599	1,207	1,967	2,261	2,622	~~3,040~~ 3,031	~~3,525~~ 3,324
9,600- 9,699	1,219	1,987	2,285	2,650	~~3,072~~ 3,050	~~3,562~~ 3,345
9,700- 9,799	1,232	2,008	2,309	2,677	~~3,104~~ 3,069	~~3,599~~ 3,365
9,800- 9,899	1,245	2,029	2,332	2,705	~~3,136~~ 3,087	~~3,636~~ 3,385
9,900- 9,999	1,257	2,049	2,356	2,732	~~3,168~~ 3,106	~~3,673~~ 3,406
10,000-10,099	1,270	2,070	2,380	2,760	~~3,200~~ 3,125	~~3,710~~ 3,426

37.53						~~3,232~~	~~3,747~~
37.54	10,100-10,199	1,283	2,091	2,404	2,788	3,144	3,446
37.55						~~3,264~~	~~3,784~~
37.56	10,200-10,299	1,295	2,111	2,428	2,815	3,162	3,467
38.1						~~3,296~~	~~3,821~~
38.2	10,300-10,399	1,308	2,132	2,451	2,843	3,181	3,487
38.3						~~3,328~~	~~3,858~~
38.4	10,400-10,499	1,321	2,153	2,475	2,870	3,200	3,507
38.5						~~3,360~~	~~3,896~~
38.6	10,500-10,599	1,334	2,174	2,499	2,898	3,218	3,528
38.7					~~2,926~~	~~3,392~~	~~3,933~~
38.8	10,600-10,699	1,346	2,194	2,523	2,921	3,237	3,548
38.9					~~2,953~~	~~3,424~~	~~3,970~~
38.10	10,700-10,799	1,359	2,215	2,547	2,938	3,256	3,568
38.11					~~2,981~~	~~3,456~~	~~4,007~~
38.12	10,800-10,899	1,372	2,236	2,570	2,955	3,274	3,589
38.13					~~3,008~~	~~3,488~~	~~4,044~~
38.14	10,900-10,999	1,384	2,256	2,594	2,972	3,293	3,609
38.15					~~3,036~~	~~3,520~~	~~4,081~~
38.16	11,000-11,099	1,397	2,277	2,618	2,989	3,312	3,629
38.17			~~2,298~~		~~3,064~~	~~3,552~~	~~4,118~~
38.18	11,100-11,199	1,410	2,294	2,642	3,006	3,331	3,649
38.19			~~2,318~~		~~3,091~~	~~3,584~~	~~4,155~~
38.20	11,200-11,299	1,422	2,306	2,666	3,023	3,349	3,667
38.21			~~2,339~~		~~3,119~~	~~3,616~~	~~4,192~~
38.22	11,300-11,399	1,435	2,319	2,689	3,040	3,366	3,686
38.23			~~2,360~~		~~3,146~~	~~3,648~~	~~4,229~~
38.24	11,400-11,499	1,448	2,331	2,713	3,055	3,383	3,705
38.25			~~2,381~~	~~2,737~~	~~3,174~~	~~3,680~~	~~4,267~~
38.26	11,500-11,599	1,461	2,344	2,735	3,071	3,400	3,723
38.27			~~2,401~~	~~2,761~~	~~3,202~~	~~3,712~~	~~4,304~~
38.28	11,600-11,699	1,473	2,356	2,748	3,087	3,417	3,742
38.29			~~2,422~~	~~2,785~~	~~3,229~~	~~3,744~~	~~4,341~~
38.30	11,700-11,799	1,486	2,367	2,762	3,102	3,435	3,761
38.31			~~2,443~~	~~2,808~~	~~3,257~~	~~3,776~~	~~4,378~~
38.32	11,800-11,899	1,499	2,378	2,775	3,116	3,452	3,780
38.33			~~2,463~~	~~2,832~~	~~3,284~~	~~3,808~~	~~4,415~~
38.34	11,900-11,999	1,511	2,389	2,788	3,131	3,469	3,798
38.35			~~2,484~~	~~2,856~~	~~3,312~~	~~3,840~~	~~4,452~~
38.36	12,000-12,099	1,524	2,401	2,801	3,146	3,485	3,817
38.37			~~2,505~~	~~2,880~~	~~3,340~~	~~3,872~~	~~4,489~~
38.38	12,100-12,199	1,537	2,412	2,814	3,160	3,501	3,836
38.39			~~2,525~~	~~2,904~~	~~3,367~~	~~3,904~~	~~4,526~~
38.40	12,200-12,299	1,549	2,423	2,828	3,175	3,517	3,854
38.41			~~2,546~~	~~2,927~~	~~3,395~~	~~3,936~~	~~4,563~~
38.42	12,300-12,399	1,562	2,434	2,841	3,190	3,534	3,871
38.43			~~2,567~~	~~2,951~~	~~3,422~~	~~3,968~~	~~4,600~~
38.44	12,400-12,499	1,575	2,445	2,854	3,205	3,550	3,889
38.45			~~2,588~~	~~2,975~~	~~3,450~~	~~4,000~~	~~4,638~~
38.46	12,500-12,599	1,588	2,456	2,867	3,219	3,566	3,907
38.47			~~2,608~~	~~2,999~~	~~3,478~~	~~4,032~~	~~4,675~~
38.48	12,600-12,699	1,600	2,467	2,880	3,234	3,582	3,924
38.49			~~2,629~~	~~3,023~~	~~3,505~~	~~4,064~~	~~4,712~~
38.50	12,700-12,799	1,613	2,478	2,894	3,249	3,598	3,942

			~~2,650~~	~~3,046~~	~~3,533~~	~~4,096~~	~~4,749~~
12,800-12,899	1,626		2,489	2,907	3,264	3,615	3,960
			~~2,670~~	~~3,070~~	~~3,560~~	~~4,128~~	~~4,786~~
12,900-12,999	1,638		2,500	2,920	3,278	3,631	3,977
			~~2,691~~	~~3,094~~	~~3,588~~	~~4,160~~	~~4,823~~
13,000-13,099	1,651		2,512	2,933	3,293	3,647	3,995
			~~2,712~~	~~3,118~~	~~3,616~~	~~4,192~~	~~4,860~~
13,100-13,199	1,664		2,523	2,946	3,308	3,663	4,012
			~~2,732~~	~~3,142~~	~~3,643~~	~~4,224~~	~~4,897~~
13,200-13,299	1,676		2,534	2,960	3,322	3,679	4,030
			~~2,753~~	~~3,165~~	~~3,671~~	~~4,256~~	~~4,934~~
13,300-13,399	1,689		2,545	2,973	3,337	3,696	4,048
			~~2,774~~	~~3,189~~	~~3,698~~	~~4,288~~	~~4,971~~
13,400-13,499	1,702		2,556	2,986	3,352	3,712	4,065
			~~2,795~~	~~3,213~~	~~3,726~~	~~4,320~~	~~5,009~~
13,500-13,599	1,715		2,567	2,999	3,367	3,728	4,083
			~~2,815~~	~~3,237~~	~~3,754~~	~~4,352~~	~~5,046~~
13,600-13,699	1,727		2,578	3,012	3,381	3,744	4,100
			~~2,836~~	~~3,261~~	~~3,781~~	~~4,384~~	~~5,083~~
13,700-13,799	1,740		2,589	3,026	3,396	3,760	4,118
			~~2,857~~	~~3,284~~	~~3,809~~	~~4,416~~	~~5,120~~
13,800-13,899	1,753		2,600	3,039	3,411	3,777	4,136
			~~2,877~~	~~3,308~~	~~3,836~~	~~4,448~~	~~5,157~~
13,900-13,999	1,765		2,611	3,052	3,425	3,793	4,153
			~~2,898~~	~~3,332~~	~~3,864~~	~~4,480~~	~~5,194~~
14,000-14,099	1,778		2,623	3,065	3,440	3,809	4,171
			~~2,919~~	~~3,356~~	~~3,892~~	~~4,512~~	~~5,231~~
14,100-14,199	1,791		2,634	3,078	3,455	3,825	4,189
			~~2,939~~	~~3,380~~	~~3,919~~	~~4,544~~	~~5,268~~
14,200-14,299	1,803		2,645	3,092	3,470	3,841	4,206
			~~2,960~~	~~3,403~~	~~3,947~~	~~4,576~~	~~5,305~~
14,300-14,399	1,816		2,656	3,105	3,484	3,858	4,224
			~~2,981~~	~~3,427~~	~~3,974~~	~~4,608~~	~~5,342~~
14,400-14,499	1,829		2,667	3,118	3,499	3,874	4,239
			~~3,002~~	~~3,451~~	~~4,002~~	~~4,640~~	~~5,380~~
14,500-14,599	1,842		2,678	3,131	3,514	3,889	4,253
			~~3,022~~	~~3,475~~	~~4,030~~	~~4,672~~	~~5,417~~
14,600-14,699	1,854		2,689	3,144	3,529	3,902	4,268
		~~1,867~~	~~3,043~~	~~3,499~~	~~4,057~~	~~4,704~~	~~5,454~~
14,700-14,799	1,864		2,700	3,158	3,541	3,916	4,282
		~~1,880~~	~~3,064~~	~~3,522~~	~~4,085~~	~~4,736~~	~~5,491~~
14,800-14,899	1,872		2,711	3,170	3,553	3,929	4,297
		~~1,892~~	~~3,084~~	~~3,546~~	~~4,112~~	~~4,768~~	~~5,528~~
14,900-14,999	1,879		2,722	3,181	3,565	3,942	4,311
15,000, or the							
amount in effect		~~1,905~~	~~3,105~~	~~3,570~~	~~4,140~~	~~4,800~~	~~5,565~~
under subd. 4	1,883		2,727	3,186	3,571	3,949	4,319

Sec. 30. Laws 2005, chapter 164, section 31, is amended to read:

Sec. 31. **REPEALER.**

Minnesota Statutes 2004, sections 518.171; ~~518.54, subdivisions 2, 4, and 4a;~~ and 518.551, subdivisions 1, 5a, 5c, and 5f, are repealed.

Sec. 31. Laws 2005, chapter 164, section 32, the effective date, is amended to read:

Sec. 32. **EFFECTIVE DATE.**

Except as otherwise provided, this act is effective January 1, 2007~~, and applies to orders adopted or modified after that date~~. With respect to the calculation of child support, this act applies to actions commenced or motions filed after the effective date, including those involving support orders in effect before the effective date. The provisions of this act used to calculate support obligations apply to actions or motions for past support or reimbursement filed on or after January 1, 2007. The terms and provisions of any court orders in effect before January 1, 2007, remain in full force and effect until modified by subsequent orders, judgments, decrees of dissolutions, or legal separations signed on or after January 1, 2007, when the provisions of this act must be applied. Sections 1 to 3 of this act are effective July 1, 2005.

Sec. 32. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change cross-references in Minnesota Statutes from section 518.171 to section 518.719.

Sec. 33. **REPEALER.**

Laws 2005, chapter 164, section 12, is repealed.

Sec. 34. **EFFECTIVE DATE.**

Except where otherwise indicated, this act is effective January 1, 2007."

Amend the title accordingly

And when so amended that the bill be recommended to pass and be referred to the full committee.

.....
(Subcommittee Chair)

March 21, 2006 .....
(Date of Subcommittee action)

Senator ..... moves to amend the Subcommittee Report on Family Law (SS3199SUB) to S.F. No. 3199 as follows:

Page 5, line 27, after the period, insert "The form must include a notice, in bold print, stating: Your failure to appear at this hearing may cause the court to order your appearance and may subject you to contempt of court."

Page 6, line 4, strike "must" and insert "may"

Page 6, line 20, delete "shall" and insert "may"

Page 13, after line 24, insert:

"Sec. 10. Laws 2005, chapter 164, section 9, is amended to read:

Sec. 9. [518.6197] [CHILD SUPPORT DEBT/ARREARAGE MANAGEMENT.]

(a) In order to reduce and otherwise manage support debts and arrearages, the parties, including the public authority where arrearages have been assigned to the public authority, may compromise unpaid support debts or arrearages owed by one party to another, whether or not docketed as a judgment. A party may agree or disagree to compromise only those debts or arrearages owed to that party.

(b) The public authority shall consider the following factors in determining whether to compromise child support debt or arrearages:

(1) whether a party, either presently or during the period for which arrears accrued, had a significant physical or mental disability, was a recipient of federal Supplemental Security Income, Title II Older Americans, Survivor's Disability Insurance, or other disability benefits, or was a recipient of public assistance based upon need;

(2) the party was institutionalized or incarcerated for an offense other than nonsupport of a child during the period for which arrearages accrued and lacked the financial ability to pay the support ordered during that time period;

(3) the order for which the party seeks debt compromise was entered by default, the party had good cause for not appearing, and the record contains no factual evidence or clearly erroneous evidence, regarding the obligor's ability to pay; and

(4) other factors the public authority considers relevant to its decision."

Page 32, delete lines 22 to 27, and insert:

"(b) If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment. If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment."

Page 34, line 21, delete "PICS" and insert "gross"

2.1 Renumber the sections in sequence and correct the internal references

2.2 Amend the title accordingly

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State of Minnesota

S.F. No. 3199 - Child Support (subcommittee report)

Author: Senator Thomas M. Neuville

Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394) K.P.

Date: March 22, 2006

This bill contains a number of amendments to the new child support law enacted last session, which included a delayed effective date of January 1, 2007.

Section 1 amends the parenting time statute to provide that in the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child.

Section 2 reinstates language inadvertently repealed last session, dealing with the scope of the child support guidelines and payments to the public authority. Some changes in the language are made.

Section 3 corrects a cross-reference.

Section 4 updates the language and cross-references in the required contents of pleadings in the expedited child support process.

Section 5 adds language defining "potential income" into a substantive section of law (it is stricken in the definitions in **section 8**).

Section 6 amends the $50 filing fee surcharge for marriage dissolutions so that it applies to the first paper filed for a party, rather than the initial pleading. This includes an effective date of July 1, 2006 (this special filing fee became effective July 1, 2005).

Section 7 contains amendments to the six-month review hearing. Custody or parenting time or child support orders may not be modified at the hearing. Qualifying language is included

regarding when contempt of court powers may be used. The court must conduct the hearing as an informal proceeding.

Section 8 contains a number of amendments to the definitions.

Subdivision 4 modifies the definition of "support order" consistent with language that was enacted last session in another law, with an additional reference to a "former spouse."

Subdivision 8 amends the definition of "obligor." It retains the general concept under current law that the primary physical custodian is not an obligor except for purposes of ordering medical support. It adds a reference to the provision in the parenting expense adjustment statute that applies in cases where parenting time is presumed equal (the noncustodial parent has 45 to 50 percent parenting time), where the parent with primary physical custody could be an obligor depending on the relative incomes of the parties. Language specifying that for purposes of medical support a custodial parent may be an obligor subject to a cost-of-living adjustment is stricken.

Subdivision 15 makes technical changes in the definition of "parental income for child support."

Subdivision 17 amends the definition of "basic support." It includes a cross-reference to the statute dealing with the computation of basic support, rather than restating part of the computation in the definition.

Subdivision 18 amends the definition of "gross income" by striking language that appears in the substantive law in **section 518.7123,** dealing with calculation of gross income.

Subdivisions 19 and 20 make technical and stylistic changes in the definitions of "joint child" and "nonjoint child."

Subdivision 21 strikes the definition of "parenting time" (it is moved to the substantive section dealing with the parenting expense adjustment in **section 27**).

Subdivision 23 strikes the definition of "potential income," which is replaced by the new language in **section 5.**

Subdivision 25 (renumbered subdivision 23) amends and clarifies the definition of "Social Security benefits."

Subdivision 26 strikes the definition of "split custody" because the term is never used.

Section 9 modifies and clarifies provisions dealing with providing income information. The Commissioner of Human Services must prepare a financial affidavit form.

Section 10 addresses an ambiguity in the standards governing modification of support or maintenance orders by requiring a showing that a change makes the terms of a current order unreasonable or unfair in all cases, except when an order is modified because of emancipation of a child. The current requirement appears in the middle of a series of clauses. It addresses situations where modification is allowed if the current support order is less than $75. Additional provisions are added under which existing orders may be modified for the first year following the effective date of the new law to include a reference to the receipt of public assistance by a parent or caregiver; changes in child care expenses; or changes in health care coverage availability. It also amends the modification rules dealing with phasing in support orders under the new guidelines.

Section 11 amends the child care exception in the modification statute.

Section 12 amends the statute dealing with calculation of gross income. Technical and clarifying amendments are included. Court-ordered child support payments for a nonjoint child and spousal maintenance are deducted for purposes of determining gross income.

Section 13 amends the statute dealing with income from self-employment to specify that a person seeking to deduct an expense, including depreciation, has the burden of proving that it is ordinary and necessary.

Section 14 contains a number of amendments to the statute dealing with computation of child support obligations. Technical and clarifying amendments are included, in particular specifying calculations that apply to both parents versus calculations that apply only to the obligor. Cross-references are also corrected and redundant cross-references are stricken.

Section 15 contains technical and clarifying amendment to the statute dealing with the general factors for deviation from the child support guidelines.

Section 16 amends the statute requiring written findings to specify and clarify the findings required depending on whether the court deviates from a presumptive child support amount.

Section 17 makes changes in the deduction from income for nonjoint children.

Section 18 amends the statute addressing Social Security or veterans benefit payments.

Section 19 amends the health care obligation order requirements to strike language referring to a cost of living adjustment.

Section 20 clarifies language regarding a determination of appropriate health care coverage.

Section 21 strikes language in the health care coverage statute providing that a presumption of no less than $50 per month must be applied to the actual health care costs of joint children or to the cost of health care coverage and makes the terminology consistent.

Section 22 modifies the statute dealing with offsets to the child support obligation based on the health care obligation.

Section 23 modifies the provisions for collecting unreimbursed or uninsured medical expenses. Time periods for requesting reimbursement are specified and other procedural requirements are included.

Section 24 amends and substantially rewrites the statute dealing with enforcing unreimbursed or uninsured medical expenses as arrears.

Sections 25 and 26 contain technical term changes.

Section 27 contains a number of amendments to the parenting expense adjustment. It also contains language moved from the definition of "parenting time" with some changes (see **section 8, subdivision 21**). Changes are made in the formula for calculating support when parenting time is presumed equal.

Section 28 contains amendments to the ability to pay and self-support adjustment statute.

Section 29 strikes an unnecessary cross-reference in the guideline statutes. The basic support amounts are revised based on the economic evaluation of the basic support schedule required by the law enacted last session.

Section 30 reinstates definitions that should not have been repealed as well as general language at the beginning of the child support guidelines dealing with payments to the public authority.

Section 31 modifies the application rules governing the new child support law. In general, it would be applicable to actions commenced or motions filed after the effective date.

Section 32 instructs the Revisor to change statutory references to the medical support law.

Section 33 repeals a duplicative provision dealing with forgiveness of arrearage debt.

Section 34 contains a January 1, 2007, effective date, consistent with the underlying provisions that are being amended.

KP:cs

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

S.F. No. 3128: A bill for an act relating to legislation; correcting erroneous, ambiguous, and omitted text and obsolete references; eliminating certain redundant, conflicting, and superseded provisions; making miscellaneous technical corrections to statutes and other laws; amending Minnesota Statutes 2004, sections 3.736, subdivision 8; 13.322, subdivision 3; 13.355, by adding a subdivision; 13.6905, by adding a subdivision; 16B.85, subdivision 5; 45.011, subdivision 1; 62D.03, subdivision 4; 62D.30, subdivision 8; 62Q.19, subdivision 2; 82.50, subdivision 7; 97A.445, subdivision 3; 103F.205, subdivision 1; 103G.293; 115A.0716, subdivision 3; 145A.09, subdivision 4; 168.187, subdivision 12; 169.781, subdivision 1; 253B.045, subdivision 2; 256.9831, subdivision 1; 256B.0917, subdivision 13; 256B.093, subdivision 3a; 256J.88; 260C.007, subdivision 6; 273.03, subdivision 3; 273.111, subdivision 3; 290.48, subdivision 10; 295.50, subdivision 10b; 297E.01, subdivision 8; 299A.292, subdivision 2; 299A.80, subdivision 1; 299C.091, subdivision 2; 349.12, subdivision 21; 353.27, subdivision 9; 353.33, subdivision 1; 353.656, subdivision 8; 354.05, subdivision 13; 466.06; 581.02; 609.652, subdivision 2; 609.671, subdivision 1; 626.5572, subdivision 2; Minnesota Statutes 2005 Supplement, sections 16C.33, subdivision 3; 116J.575, subdivision 1; 138.17, subdivision 10; 144.225, subdivision 7; 144.335, subdivision 1; 144.602, subdivision 1; 148B.60, subdivision 3; 148D.240, subdivision 5; 168.128, subdivision 2; 168.33, subdivision 2; 169.18, subdivision 11; 216B.1612, subdivision 2; 237.763; 245C.15, subdivision 3; 256B.441, subdivision 13; 270C.96; 289A.42, subdivision 1; 296A.22, subdivision 9; 325E.61, subdivision 5; 349.153; 357.021, subdivision 1a; 604A.33, subdivision 1; Laws 2005, chapter 20, article 2, section 1; Laws 2005, chapter 88, article 3, section 10; Laws 2005, First Special Session chapter 6, article 3, section 95; repealing Minnesota Statutes 2004, sections 155A.03, subdivision 11; 299J.061; 309.50, subdivision 8; 326.991, subdivision 2; Laws 2001, First Special Session chapter 5, article 12, sections 31; 32; Laws 2005, chapter 156, article 5, section 20; Laws 2005, First Special Session chapter 4, article 5, section 14.

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

Page 17, lines 22 and 31, delete "contained in" and insert "governed by"

Page 17, delete section 2 and insert:

"Sec. 2. Minnesota Statutes 2004, section 13.322, is amended by adding a subdivision to read:

Subd. 5. **Use of Social Security numbers.** Certain restrictions on the use of Social Security numbers are governed by section 325E.59."

Amend the title accordingly

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

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

Senator Betzold introduced–

S.F. No. 3128: Referred to the Committee on Judiciary.

A bill for an act

relating to legislation; correcting erroneous, ambiguous, and omitted text and obsolete references; eliminating certain redundant, conflicting, and superseded provisions; making miscellaneous technical corrections to statutes and other laws; amending Minnesota Statutes 2004, sections 3.736, subdivision 8; 13.322, subdivision 3; 13.355, by adding a subdivision; 13.6905, by adding a subdivision; 16B.85, subdivision 5; 45.011, subdivision 1; 62D.03, subdivision 4; 62D.30, subdivision 8; 62Q.19, subdivision 2; 82.50, subdivision 7; 97A.445, subdivision 3; 103F.205, subdivision 1; 103G.293; 115A.0716, subdivision 3; 145A.09, subdivision 4; 168.187, subdivision 12; 169.781, subdivision 1; 253B.045, subdivision 2; 256.9831, subdivision 1; 256B.0917, subdivision 13; 256B.093, subdivision 3a; 256J.88; 260C.007, subdivision 6; 273.03, subdivision 3; 273.111, subdivision 3; 290.48, subdivision 10; 295.50, subdivision 10b; 297E.01, subdivision 8; 299A.292, subdivision 2; 299A.80, subdivision 1; 299C.091, subdivision 2; 349.12, subdivision 21; 353.27, subdivision 9; 353.33, subdivision 1; 353.656, subdivision 8; 354.05, subdivision 13; 466.06; 581.02; 609.652, subdivision 2; 609.671, subdivision 1; 626.5572, subdivision 2; Minnesota Statutes 2005 Supplement, sections 16C.33, subdivision 3; 116J.575, subdivision 1; 138.17, subdivision 10; 144.225, subdivision 7; 144.335, subdivision 1; 144.602, subdivision 1; 148B.60, subdivision 3; 148D.240, subdivision 5; 168.128, subdivision 2; 168.33, subdivision 2; 169.18, subdivision 11; 216B.1612, subdivision 2; 237.763; 245C.15, subdivision 3; 256B.441, subdivision 13; 270C.96; 289A.42, subdivision 1; 296A.22, subdivision 9; 325E.61, subdivision 5; 349.153; 357.021, subdivision 1a; 604A.33, subdivision 1; Laws 2005, chapter 20, article 2, section 1; Laws 2005, chapter 88, article 3, section 10; Laws 2005, First Special Session chapter 6, article 3, section 95; repealing Minnesota Statutes 2004, sections 155A.03, subdivision 11; 299J.061; 309.50, subdivision 8; 326.991, subdivision 2; Laws 2001, First Special Session chapter 5, article 12, sections 31; 32; Laws 2005, chapter 156, article 5, section 20; Laws 2005, First Special Session chapter 4, article 5, section 14.

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

ARTICLE 1

GENERAL PROVISIONS

Section 1. Minnesota Statutes 2004, section 3.736, subdivision 8, is amended to read:

Subd. 8. **Liability insurance.** A state agency, including an entity defined as a part of the state in section 3.732, subdivision 1, clause (1), may procure insurance against liability of the agency and its employees for damages resulting from the torts of the agency and its employees. Procurement of the insurance is a waiver of the limits of governmental liability under subdivisions 4 and 4a only to the extent that valid and collectible insurance, including where applicable, proceeds from the Minnesota ~~Guarantee Fund~~ Insurance Guaranty Association, exceeds those limits and covers the claim. Purchase of insurance has no other effect on the liability of the agency and its employees. Procurement of commercial insurance, participation in the risk management fund under section 16B.85, or provisions of an individual self-insurance plan with or without a reserve fund or reinsurance does not constitute a waiver of any governmental immunities or exclusions.

Sec. 2. Minnesota Statutes 2004, section 16B.85, subdivision 5, is amended to read:

Subd. 5. **Risk management fund not considered insurance.** A state agency, including an entity defined as a part of the state in section 3.732, subdivision 1, clause (1), may procure insurance against liability of the agency and its employees for damages resulting from the torts of the agency and its employees. The procurement of this insurance constitutes a waiver of the limits of governmental liability under section 3.736, subdivisions 4 and 4a, only to the extent that valid and collectible insurance, including where applicable, proceeds from the Minnesota ~~Guarantee Fund~~ Insurance Guaranty Association, exceeds those limits and covers the claim. Purchase of insurance has no other effect on the liability of the agency and its employees. Procurement of commercial insurance, participation in the risk management fund under this section, or provisions of an individual self-insurance plan with or without a reserve fund or reinsurance does not constitute a waiver of any governmental immunities or exclusions.

Sec. 3. Minnesota Statutes 2004, section 45.011, subdivision 1, is amended to read:

Subdivision 1. **Scope.** As used in chapters 45 to 83, 155A, ~~309,~~ 332, 345, and 359, and sections 325D.30 to 325D.42, 326.83 to 326.991, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 4. Minnesota Statutes 2004, section 97A.445, subdivision 3, is amended to read:

Subd. 3. **Angling and spearing; disabled railroad and postal retirees.** A license is not required to take fish by angling or spearing for a resident that is:

(1) receiving aid under the federal Railroad Retirement Act of ~~1937~~ 1974, United States Code, title 45, section ~~228b(a)5~~ 231a(a)(1)(v); or

(2) a former employee of the United States Postal Service receiving disability pay under United States Code, title 5, section 8337.

Sec. 5. Minnesota Statutes 2005 Supplement, section 138.17, subdivision 10, is amended to read:

Subd. 10. **Optical image storage.** (a) Any government record, including a record with archival value, may be transferred to and stored on a nonerasable optical imaging system and retained only in that format, if the requirements of this section are met.

(b) All documents preserved on nonerasable optical imaging systems must meet standards for permanent records specified in section 15.17, subdivision 1, and must be kept available for retrieval so long as any law requires. Standards under section 15.17, subdivision 1, may not be inconsistent with efficient use of optical imaging systems.

(c) A government entity storing a record on an optical imaging system shall create and store a backup copy of the record at a site other than the site where the original is kept. The government entity shall retain the backup copy and operable retrieval equipment so long as any law requires the original to be retained. The backup copy required by this paragraph must be preserved either (1) on a nonerasable optical imaging system; or (2) by another reproduction method approved by the records disposition panel.

(d) All contracts for the purchase of optical imaging systems used pursuant to this chapter shall contain terms that insure continued retrievability of the optically stored images and conform to any guidelines that may be established by the Office of Enterprise Technology ~~of the Department of Administration~~ for perpetuation of access to stored data.

Sec. 6. Minnesota Statutes 2005 Supplement, section 168.128, subdivision 2, is amended to read:

Subd. 2. **Plates.** (a) A person who operates a limousine for other than personal use shall register the motor vehicle as provided in this section.

(b) A person who operates a limousine for personal use may apply. The commissioner shall issue limousine plates to the registered owner of a limousine who:

(1) certifies that an insurance policy under section ~~65B.13~~ 65B.135 in an aggregate amount of $300,000 per accident is in effect for the entire period of the registration;

(2) provides the commissioner with proof that the passenger automobile license tax and a $10 fee have been paid for each limousine receiving limousine plates; and

(3) complies with this chapter and rules governing the registration of motor vehicles and licensing of drivers.

(c) The limousine plates must be designed to specifically identify the vehicle as a limousine and must be clearly marked with the letters "LM." Limousine plates may not be transferred upon sale of the limousine, but may be transferred to another limousine owned by the same person upon notifying the commissioner and paying a $5 transfer fee.

Sec. 7. Minnesota Statutes 2004, section 168.187, subdivision 12, is amended to read:

Subd. 12. **Registration of proratable vehicles.** (1) The commissioner of public safety shall register proratable vehicles of a fleet upon application and payment of registration fees as provided in subdivision 11. Payment of an additional fee for each vehicle so registered may be required by the commissioner in an amount not to exceed $5 per motor powered vehicle, for issuance of a plate, sticker, or other suitable identification for each vehicle. A registration card shall be issued for each vehicle registered, which shall appropriately identify the vehicle for which it is issued. Such registration card shall be carried in or upon the vehicle for which it has been issued, at all times, except that the registration cards for all vehicles in a combination of vehicles may be carried in or upon the vehicle supplying the motive power.

(2) Fleet vehicles registered as provided in (1) shall be deemed fully registered in this state for any type of movement or operation, except that when a state grant of authority is required for any movement or operation, no such vehicle shall be operated in this state unless the owner or operator thereof has been granted authority or rights therefor by the ~~Public Utilities Commission~~ state and unless said vehicle is being operated in conformity with such authority or rights. No registration under this section shall excuse the owner or operator of any vehicle from compliance with the laws of this state, except those requiring registration and licensing.

Sec. 8. Minnesota Statutes 2005 Supplement, section 168.33, subdivision 2, is amended to read:

Subd. 2. **Deputy registrars.** (a) The commissioner may appoint, and for cause discontinue, a deputy registrar for any statutory or home rule charter city as the public interest and convenience may require, without regard to whether the county auditor of the county in which the city is situated has been appointed as the deputy registrar for the county or has been discontinued as the deputy registrar for the county, and without regard to whether the county in which the city is situated has established a county license bureau that issues motor vehicle licenses as provided in section 373.32.

(b) The commissioner may appoint, and for cause discontinue, a deputy registrar for any statutory or home rule charter city as the public interest and convenience may require, if the auditor for the county in which the city is situated chooses not to accept appointment as the deputy registrar for the county or is discontinued as a deputy registrar, or if the county in which the city is situated has not established a county license bureau that issues motor vehicle licenses as provided in section 373.32. The individual appointed by the commissioner as a deputy registrar for any statutory or home rule charter city must be a resident of the county in which the city is situated.

(c) The commissioner may appoint, and for cause discontinue, the county auditor of each county as a deputy registrar.

(d) Despite any other provision, a person other than a county auditor or a director of a county license bureau, who was appointed by the registrar before August 1, 1976, as a deputy registrar for any statutory or home rule charter city, may continue to serve as deputy registrar and may be discontinued for cause only by the commissioner. The county auditor who appointed the deputy registrars is responsible for the acts of deputy registrars appointed by the auditor.

(e) Each deputy, before entering upon the discharge of duties, shall take and subscribe an oath to faithfully discharge the duties and to uphold the laws of the state.

(f) If a deputy registrar appointed under this subdivision is not an officer or employee of a county or statutory or home rule charter city, the deputy shall in addition give bond to the state in the sum of $10,000, or a larger sum as may be required by the commissioner, conditioned upon the faithful discharge of duties as deputy registrar.

(g) Until January 1, 2012, a corporation governed by chapter 302A may be appointed a deputy registrar. Upon application by an individual serving as a deputy registrar and the giving of the requisite bond as provided in this subdivision, personally assured by the individual or another individual approved by the commissioner, a corporation named in an application then becomes the duly appointed and qualified successor to the deputy registrar. The appointment of any corporation as a deputy registrar expires January 1, ~~2009~~ 2012. The commissioner shall appoint an individual as successor to the corporation as a deputy registrar. The commissioner shall appoint as the successor agent to a corporation whose appointment expires under this paragraph an officer of the corporation if the officer applies for appointment before July 1, ~~2009~~ 2012.

(h) Each deputy registrar appointed under this subdivision shall keep and maintain office locations approved by the commissioner for the registration of vehicles and the collection of taxes and fees on vehicles.

(i) The deputy registrar shall keep records and make reports to the commissioner as the commissioner requires. The records must be maintained at the offices of the deputy registrar. The records and offices of the deputy registrar must at all times be open to the inspection of the commissioner or the commissioner's agents. The deputy registrar shall report to the commissioner by the next working day following receipt all registrations made and taxes and fees collected by the deputy registrar.

(j) The filing fee imposed under subdivision 7 must be deposited in the treasury of the place for which appointed or, if not a public official, a deputy shall retain the filing fee, but the registration tax and any additional fees for delayed registration the deputy registrar has collected the deputy registrar shall deposit by the next working day following receipt in an approved state depository to the credit of the state through the commissioner of finance. The place for which the deputy registrar is appointed through its governing body must provide the deputy registrar with facilities and personnel to carry out the duties imposed by this subdivision if the deputy is a public official. In all other cases, the deputy shall maintain a suitable facility for serving the public.

Sec. 9. Minnesota Statutes 2005 Supplement, section 169.18, subdivision 11, is amended to read:

Subd. 11. **Passing parked emergency vehicle; citation; probable cause.** (a) When approaching and before passing an authorized emergency vehicle with its emergency lights activated that is parked or otherwise stopped on or next to a street or highway having two lanes in the same direction, the driver of a vehicle shall safely move the vehicle to the lane farthest away from the emergency vehicle, if it is possible to do so.

(b) When approaching and before passing an authorized emergency vehicle with its emergency lights activated that is parked or otherwise stopped on or next to a street or highway having more than two lanes in the same direction, the driver of a vehicle shall safely move the vehicle so as to leave a full lane vacant between the driver and any lane in which the emergency vehicle is completely or partially parked or otherwise stopped, if it is possible to do so.

(c) A peace officer may issue a citation to the driver of a motor vehicle if the peace officer has probable cause to believe that the driver has operated the vehicle in violation of this subdivision within the four-hour period following the termination of the incident or a receipt of a report under paragraph (d). The citation may be issued even though the violation was not committed in the presence of the peace officer.

(d) Although probable cause may be otherwise satisfied by other evidentiary elements or factors, probable cause is sufficient for purposes of this subdivision when the

person cited is operating the vehicle described by a member of the crew of an authorized emergency vehicle responding to an incident in a timely report of the violation of this subdivision, which includes a description of the vehicle used to commit the offense and the vehicle's license plate number. For the purposes of issuance of a citation under paragraph (c), "timely" means that the report must be made within a four-hour period following the termination of the incident.

(e) For purposes of paragraphs (a) and (b) only, the terms "authorized emergency vehicle" and "emergency vehicle" ~~includes~~ include a towing vehicle defined in section 169.01, subdivision 52, that has activated flashing lights authorized under section 169.64, subdivision 3, in addition to the vehicles described in the definition for "authorized emergency vehicle" in section 169.01, subdivision 5.

Sec. 10. Minnesota Statutes 2004, section 169.781, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For purposes of sections 169.781 to 169.783:

(a) "Commercial motor vehicle" means:

(1) a commercial motor vehicle as defined in section 169.01, subdivision 75, paragraph (a); and

(2) each vehicle in a combination of more than 26,000 pounds.

"Commercial motor vehicle" does not include (1) a school bus or Head Start bus displaying a certificate under section 169.451, (2) a bus operated by the Metropolitan Council or by a local transit commission created in chapter 458A, or (3) a motor vehicle ~~with a gross weight of not more than 26,000 pounds, carrying in bulk tanks a total of not more than 200 gallons of petroleum products or liquid fertilizer or pesticide~~ that is required to be placarded under Code of Federal Regulations, title 49, parts 100-185.

(b) "Commissioner" means the commissioner of public safety.

(c) "Owner" means a person who owns, or has control, under a lease of more than 30 days' duration, of one or more commercial motor vehicles.

(d) "Storage semitrailer" means a semitrailer that (1) is used exclusively to store property at a location not on a street or highway, (2) does not contain any load when moved on a street or highway, (3) is operated only during daylight hours, and (4) is marked on each side of the semitrailer "storage only" in letters at least six inches high.

(e) "Building mover vehicle" means a vehicle owned or leased by a building mover as defined in section 221.81, subdivision 1, paragraph (a), and used exclusively for moving buildings.

Sec. 11. Minnesota Statutes 2005 Supplement, section 216B.1612, subdivision 2, is amended to read:

Subd. 2. **Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "C-BED tariff" or "tariff" means a community-based energy development tariff.

(c) "Qualifying owner" means:

(1) a Minnesota resident;

(2) a limited liability ~~corporation~~ company that is organized under the laws of this state and that is made up of members who are Minnesota residents;

(3) a Minnesota nonprofit organization organized under chapter 317A;

(4) a Minnesota cooperative association organized under chapter 308A or 308B, other than a rural electric cooperative association or a generation and transmission cooperative;

(5) a Minnesota political subdivision or local government other than a municipal electric utility or municipal power agency, including, but not limited to, a county, statutory or home rule charter city, town, school district, or public or private higher education institution or any other local or regional governmental organization such as a board, commission, or association; or

(6) a tribal council.

(d) "Net present value rate" means a rate equal to the net present value of the nominal payments to a project divided by the total expected energy production of the project over the life of its power purchase agreement.

(e) "Standard reliability criteria" means:

(1) can be safely integrated into and operated within the utility's grid without causing any adverse or unsafe consequences; and

(2) is consistent with the utility's resource needs as identified in its most recent resource plan submitted under section 216B.2422.

(f) "Community-based energy project" or "C-BED project" means a new wind energy project that:

(1) has no single qualifying owner owning more than 15 percent of a C-BED project that consists of more than two turbines; or

(2) for C-BED projects of one or two turbines, is owned entirely by one or more qualifying owners, with at least 51 percent of the total financial benefits over the life of the project flowing to qualifying owners; and

(3) has a resolution of support adopted by the county board of each county in which the project is to be located, or in the case of a project located within the boundaries of a reservation, the tribal council for that reservation.

Sec. 12. Minnesota Statutes 2004, section 253B.045, subdivision 2, is amended to read:

Subd. 2. **Facilities.** Each county or a group of counties shall maintain or provide by contract a facility for confinement of persons held temporarily for observation, evaluation, diagnosis, treatment, and care. When the temporary confinement is provided at a regional treatment center, the commissioner shall charge the county of financial responsibility for the costs of confinement of persons hospitalized under section 253B.05, subdivisions 1 and 2, and section 253B.07, subdivision 2b, except that the commissioner shall bill the responsible health plan first. If the person has health plan coverage, but the hospitalization does not meet the criteria in subdivision 6 or section 62M.07, 62Q.53, or 62Q.535, the county is responsible. "County of financial responsibility" means the county in which the person resides at the time of confinement or, if the person has no residence in this state, the county which initiated the confinement. The charge shall be based on the commissioner's determination of the cost of care pursuant to section 246.50, subdivision 5. When there is a dispute as to which county is the county of financial responsibility, the county charged for the costs of confinement shall pay for them pending final determination of the dispute over financial responsibility. Disputes about the county of financial responsibility shall be submitted to the commissioner to be settled in the manner prescribed in section 256G.09.

Sec. 13. Minnesota Statutes 2004, section 260C.007, subdivision 6, is amended to read:

Subd. 6. **Child in need of protection or services.** "Child in need of protection or services" means a child who is in need of protection or services because the child:

(1) is abandoned or without parent, guardian, or custodian;

(2)(i) has been a victim of physical or sexual abuse, (ii) resides with or has resided with a victim of domestic child abuse as defined in subdivision 5, (iii) resides with or would reside with a perpetrator of domestic child abuse or child abuse as defined in subdivision 5, or (iv) is a victim of emotional maltreatment as defined in subdivision 8;

(3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;

(4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to

provide that care, including a child in voluntary placement due solely to the child's developmental disability or emotional disturbance;

(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;

(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody, including a child in placement according to voluntary release by the parent under section 260C.212, subdivision 8;

(7) has been placed for adoption or care in violation of law;

(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;

(9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;

(10) is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect;

(11) has engaged in prostitution as defined in section 609.321, subdivision 9;

(12) has committed a delinquent act or a juvenile petty offense before becoming ten years old;

(13) is a runaway;

(14) is a habitual truant; or

(15) has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a

certification under section 260B.125, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense~~; or~~

~~(16) has been found by the court to have committed domestic abuse perpetrated by a minor under Laws 1997, chapter 239, article 10, sections 2 to 26, has been ordered excluded from the child's parent's home by an order for protection/minor respondent, and the parent or guardian is either unwilling or unable to provide an alternative safe living arrangement for the child~~.

Sec. 14. Minnesota Statutes 2005 Supplement, section 270C.96, is amended to read:

270C.96 REASSESSMENT; COMPENSATION; REIMBURSEMENT BY COUNTIES.

The compensation of each special assessor and deputies, appointed under the provisions of section 270C.94 and the expenses as such, shall be fixed by the commissioner and paid out of money appropriated for operation of the department. The commissioner on August 1 shall notify the auditor of each affected county of the amount thereof paid on behalf of such county since August 1 of the preceding year, whereupon the county auditor shall levy a tax upon the taxable property in the assessment district or districts wherein such reassessment was made sufficient to pay the same. One-half of such tax shall be levied in the year in which the commissioner so notifies the county auditor and the remaining one-half shall be levied in the following year. The respective counties shall reimburse the state by paying one-half of the tax so assessed on or before July 1 and the remaining one-half on or before December 1 in the year in which the tax is payable~~ by owner~~, whether or not the tax was collected by the county. The reimbursement shall be credited to the general fund. If any county fails to reimburse the state within the time specified herein, the commissioner is empowered to order withholding of state aids or distributions to such county equal to the amount delinquent.

Sec. 15. Minnesota Statutes 2004, section 299A.292, subdivision 2, is amended to read:

Subd. 2. **Duties.** (a) The commissioner shall:

(1) gather, develop, and make available throughout the state information and educational materials on preventing and reducing violence in the family and in the community, both directly and by serving as a clearinghouse for information and educational materials from schools, state and local agencies, community service providers, and local organizations;

(2) foster collaboration among schools, state and local agencies, community service providers, and local organizations that assist in violence intervention or prevention;

(3) assist schools, state and local agencies, service providers, and organizations, on request, with training and other programs designed to educate individuals about violence and reinforce values that contribute to ending violence;

(4) after consulting with all state agencies involved in preventing or reducing violence within the family or community, develop a statewide strategy for preventing and reducing violence that encompasses the efforts of those agencies and takes into account all money available for preventing or reducing violence from any source;

(5) submit the strategy to the governor by January 15 of each calendar year, along with a summary of activities occurring during the previous year to prevent or reduce violence experienced by children, young people, and their families;

(6) assist appropriate professional and occupational organizations, including organizations of law enforcement officers, prosecutors, and educators, in developing and operating informational and training programs to improve the effectiveness of activities to prevent or reduce violence within the family or community; and

(7) take other actions deemed necessary to reduce the incidence of crime.

The commissioner also may, through this program, support activities and strategies of the ~~Criminal Gang Council and Strike Force~~ Gang and Drug Oversight Council as specified in ~~sections 299A.64, 299A.65, and 299A.66~~ section 299A.641.

(b) The commissioner shall gather and make available information on prevention and supply reduction activities throughout the state, foster cooperation among involved state and local agencies, and assist agencies and public officials in training and other programs designed to improve the effectiveness of prevention and supply reduction activities.

(c) The commissioner shall coordinate the distribution of funds received by the state of Minnesota through the federal Anti-Drug Abuse Act. The commissioner shall determine recipients of grants under section 299A.33, after consultation with the Chemical Abuse Prevention Resource Council.

(d) The commissioner shall:

(1) after consultation with all state agencies involved in prevention or supply reduction activities, develop a state chemical abuse and dependency strategy encompassing the efforts of those agencies and taking into account all money available for prevention and supply reduction activities, from any source;

(2) submit the strategy to the governor by January 15 of each year, along with a summary of prevention and supply reduction activities during the preceding calendar year;

(3) assist appropriate professional and occupational organizations, including organizations of law enforcement officers, prosecutors, and educators, in developing and

operating informational and training programs to improve the effectiveness of prevention and supply reduction activities;

(4) provide information, including information on drug trends, and assistance to state and local agencies, both directly and by functioning as a clearinghouse for information from other agencies;

(5) facilitate cooperation among drug program agencies; and

(6) in coordination with the Chemical Abuse Prevention Resource Council, review, approve, and coordinate the administration of prevention, criminal justice, and treatment grants.

Sec. 16. Minnesota Statutes 2004, section 299C.091, subdivision 2, is amended to read:

Subd. 2. **Entry of data into system.** (a) A law enforcement agency may submit data on an individual to the criminal gang investigative data system only if the agency obtains and maintains the documentation required under this subdivision. Documentation may include data obtained from other criminal justice agencies, provided that a record of all of the documentation required under paragraph (b) is maintained by the agency that submits the data to the bureau. Data maintained by a law enforcement agency to document an entry in the system are confidential data on individuals as defined in section 13.02, subdivision 3, but may be released to criminal justice agencies.

(b) A law enforcement agency may submit data on an individual to the bureau for inclusion in the system if the individual is 14 years of age or older and the agency has documented that:

(1) the individual has met at least three of the criteria or identifying characteristics of gang membership developed by the ~~Criminal~~ Gang and Drug Oversight Council under section ~~299A.65~~ 299A.641, subdivision 3, clause (7), as required by the council; and

(2) the individual has been convicted of a gross misdemeanor or felony or has been adjudicated or has a stayed adjudication as a juvenile for an offense that would be a gross misdemeanor or felony if committed by an adult.

Sec. 17. Minnesota Statutes 2005 Supplement, section 325E.61, subdivision 5, is amended to read:

Subd. 5. **Security assessments.** Each government entity shall conduct a comprehensive security assessment of any personal information maintained by the government entity. For the purposes of this subdivision, personal information is defined under section 325E.61, subdivision 1, paragraphs (e) and (f).

Sec. 18. Minnesota Statutes 2004, section 466.06, is amended to read:

466.06 LIABILITY INSURANCE.

The governing body of any municipality may procure insurance against liability of the municipality and its officers, employees, and agents for damages, including punitive damages, resulting from its torts and those of its officers, employees, and agents, including torts specified in section 466.03 for which the municipality is immune from liability. The insurance may provide protection in excess of the limit of liability imposed by section 466.04. If a municipality other than a school district has the authority to levy taxes, the premium costs for such insurance may be levied in excess of any per capita or local tax rate tax limitation imposed by statute or charter. Any independent board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly procure liability insurance with respect to the field of its operation. The procurement of such insurance constitutes a waiver of the limits of governmental liability under section 466.04 only to the extent that valid and collectible insurance, including where applicable, proceeds from the Minnesota ~~Guarantee Fund~~ Insurance Guaranty Association, exceeds those limits and covers the claim. The purchase of insurance has no other effect on the liability of the municipality or its employees. Procurement of commercial insurance, participation in a self-insurance pool pursuant to section 471.981, or provision for an individual self-insurance plan with or without a reserve fund or reinsurance shall not constitute a waiver of any governmental immunities or exclusions.

Sec. 19. Minnesota Statutes 2004, section 609.652, subdivision 2, is amended to read:

Subd. 2. **Criminal acts.** (a) A person who does any of the following for consideration and with intent to manufacture, sell, issue, publish, or pass more than one fraudulent driver's license or identification card or to cause or permit any of the items listed in clauses (1) to (5) to be used in forging or making more than one false or counterfeit driver's license or identification card is guilty of a crime:

(1) has in control, custody, or possession any plate, block, press, stone, digital image, computer software program, encoding equipment, computer optical scanning equipment, or digital photo printer, or other implement, or any part of such an item, designed to assist in making a fraudulent driver's license or identification card;

(2) engraves, makes, or amends, or begins to engrave, make, or amend, any plate, block, press, stone, or other implement for the purpose of producing a fraudulent driver's license or identification card;

(3) uses a photocopier, digital camera, photographic image, or computer software to generate a fraudulent driver's license or identification card;

(4) has in control, custody, or possession or makes or provides paper or other material adapted and designed for the making of a fraudulent driver's license or identification card; or

(5) prints, photographs, or in any manner makes or executes an engraved photograph, print, or impression purporting to be a driver's license or identification card.

(b) Notwithstanding section 171.22, a person who ~~manufacturers~~ manufactures or possesses more than one fraudulent driver's license or identification card with intent to sell is guilty of a crime.

Sec. 20. Laws 2005, chapter 88, article 3, section 10, is amended to read:

Sec. 10. **SUBMISSION TO VOTERS.**

The constitutional amendment proposed in section ~~12~~ 9 must be presented to the people at the 2006 general election. The question submitted must be:

"Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?

Yes .....

No ....."

Sec. 21. **TRANSFER OF APPROPRIATIONS TO PROPER BILL LOCATION.**

The appropriations for a statewide trauma system and family planning grants, found in Laws 2005, First Special Session chapter 4, article 9, section 3, subdivision 3, are transferred to Laws 2005, First Special Session chapter 4, article 9, section 3, subdivision 2. The subdivision totals remain the same.

EFFECTIVE DATE. This section is effective retroactively from July 1, 2005.

Sec. 22. **REVISOR'S INSTRUCTION; FARMED CERVIDAE.**

The revisor of statutes shall change all references to section 17.451, subdivision 2, to section 35.153, subdivision 3, in Minnesota Statutes and Minnesota Rules.

Sec. 23. **REVISOR'S INSTRUCTION; RECREATIONAL EQUIPMENT.**

The revisor of statutes shall change the term "recreational equipment" to read "recreational vehicle" or its plural, as appropriate, to conform to the terminology change made in Laws 2005, First Special Session chapter 6, where the term appears in Minnesota Statutes, sections 65B.49, 168.1296, 168.27, 168A.03, 168D.17, 169.80, and 325F.665.

Sec. 24. **REVISOR'S INSTRUCTION; RECODIFICATION.**

The revisor of statutes shall recodify Minnesota Statutes, section 325E.61, subdivision 5, as amended, as section 13.055, subdivision 6.

Sec. 25. **REVISOR'S INSTRUCTION; AFDC.**

(a) The revisor of statutes shall change "AFDC" to "MFIP" in Minnesota Rules, parts 3050.3100, subparts 1 and 3; 7620.0100, subpart 24; 9500.1219, subparts 2 and 6; 9500.1223, subpart 2; 9500.1231, subparts 4 and 6; 9500.1235; 9500.1251, subpart 2; and 9530.7015, subpart 1.

(b) The revisor of statutes shall change "aid to families with dependent children" to "the Minnesota family investment program," as appropriate, in Minnesota Rules, parts 3300.5040, subpart 4; 4900.3371, subparts 3 and 10; 9055.0020, subpart 6; 9500.1237, subpart 8; 9530.7000, subpart 13; and 9535.4053.

(c) The revisor of statutes shall replace the words "aid to families with dependent children (AFDC) or" with "the" in Minnesota Rules, part 4830.7100, subpart 5, item D, and the words "AFDC program rules, part 9500.2440, subpart 7" with "MFIP requirements in Minnesota Statutes, section 256J.08, subdivision 11" in Minnesota Rules, part 9500.1206, subpart 18b.

(d) The revisor of statutes shall change "256.72 to 256.87" to "256J.01 to 256J.88" in Minnesota Rules, part 4900.3371, subparts 3 and 10.

Sec. 26. **REPEALER.**

Subdivision 1. **Obsolete Minnesota Cosmetology Advisory Council definition.** Minnesota Statutes 2004, section 155A.03, subdivision 11, is repealed.

Subd. 2. **Expired Pipeline Advisory Committee.** Minnesota Statutes 2004, section 299J.061, is repealed.

Subd. 3. **Social and charitable solicitations; repeal of definition.** Minnesota Statutes 2004, section 309.50, subdivision 8, is repealed.

Subd. 4. **Minneapolis contractor licensing.** Minnesota Statutes 2004, section 326.991, subdivision 2, is repealed.

Subd. 5. **Prospective amendments not effective.** Laws 2001, First Special Session chapter 5, article 12, sections 31; 32, are repealed.

Subd. 6. **Conflict; criminal juvenile justice policy group.** Laws 2005, chapter 156, article 5, section 20, is repealed.

Subd. 7. **Conflict; state children and community services grant allocation.** Laws 2005, First Special Session chapter 4, article 5, section 14, is repealed retroactively from July 1, 2005.

ARTICLE 2
DATA PRACTICES

Section 1. Minnesota Statutes 2004, section 13.322, subdivision 3, is amended to read:

Subd. 3. **Higher Education Services Office.** (a) **General.** Data sharing involving the Higher Education Services Office and other institutions is governed by ~~section~~ sections 136A.05 and 136A.08, subdivision 8.

(b) **Student financial aid.** Data collected and used by the Higher Education Services Office on applicants for financial assistance are classified under section 136A.162.

(c) **Minnesota college savings plan data.** Account owner data, account data, and data on beneficiaries of accounts under the Minnesota college savings plan are classified under section 136G.05, subdivision 10.

(d) **School financial records.** Financial records submitted by schools registering with the Higher Education Services Office are classified under section 136A.64.

(e) **Enrollment and financial aid data.** Data collected from eligible institutions on student enrollment and federal and state financial aid are contained in sections 136A.121, subdivision 18, and 136A.1701, subdivision 11.

Sec. 2. Minnesota Statutes 2004, section 13.355, is amended by adding a subdivision to read:

Subd. 3. **Use of Social Security numbers.** Certain restrictions on the use of Social Security numbers are contained in section 325E.59.

Sec. 3. Minnesota Statutes 2004, section 13.6905, is amended by adding a subdivision to read:

Subd. 17a. **CIBRS data.** Data relating to the Comprehensive Incident Based Reporting System are contained in section 299C.40.

ARTICLE 3
CROSS-REFERENCES

Section 1. Minnesota Statutes 2005 Supplement, section 16C.33, subdivision 3, is amended to read:

Subd. 3. **Solicitation of qualifications or proposals.** (a) Every user agency, except the Capitol Area Architectural and Planning Board, shall submit a written request for a design-builder for its project to the commissioner who shall forward the request to the board, consistent with section 16B.33, subdivision ~~3a~~ 3, paragraph (a). The University of Minnesota shall follow the process in subdivision 4 to select design-builders for projects that are subject to section 16B.33. The written request must include a description of the project, the total project cost, a description of any special requirements or unique features of the proposed project, and other information requested by the board which will assist the board in carrying out its duties and responsibilities set forth in this section.

(b) A request for qualifications or proposals soliciting design-builders shall be prepared for each design-build contract pursuant to subdivision 5 or 7. The request for qualifications or proposals shall contain, at a minimum, the following elements:

(1) the identity of the agency for which the project will be built and that will award the design-build contract;

(2) procedures for submitting qualifications or proposals, the criteria for evaluation of qualifications or proposals and the relative weight for each criterion and subcriterion, and the procedures for making awards according to the stated criteria and subcriteria, including a reference to the requirements of this section;

(3) the proposed terms and conditions for the contract;

(4) the desired qualifications of the design-builder and the desired or permitted areas of construction to be performed by named members of the design-build team, if applicable. The primary designer shall be a named member of the design-build team;

(5) the schedule for commencement and completion of the project;

(6) any applicable budget limits for the project;

(7) the requirements for insurance and statutorily required performance and payment bonds;

(8) the identification and location of any other information in the possession or control of the agency that the user agency determines is material, which may include surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records;

(9) for a design-build design and price-based selection process, the request shall also include the design criteria package, including the performance and technical requirements for the project, and the functional and operational elements for the delivery of the completed project. The request shall also contain a description of the drawings, specifications, or other submittals to be included with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable, and the stipend to be paid to the design-builders selected to submit the above described information; and

(10) the criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of qualified design-builders. The criteria shall not consider the collective bargaining status of the design-builder.

(c) Notice of requests for qualifications or proposals must be advertised in the State Register.

Sec. 2. Minnesota Statutes 2004, section 62D.03, subdivision 4, is amended to read:

Subd. 4. **Application requirements.** Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, and shall be in a form prescribed by the commissioner of health. Each application shall include the following:

(a) a copy of the basic organizational document, if any, of the applicant and of each major participating entity; such as the articles of incorporation, or other applicable documents, and all amendments thereto;

(b) a copy of the bylaws, rules and regulations, or similar document, if any, and all amendments thereto which regulate the conduct of the affairs of the applicant and of each major participating entity;

(c) a list of the names, addresses, and official positions of the following:

(1) all members of the board of directors, or governing body of the local government unit, and the principal officers and shareholders of the applicant organization; and

(2) all members of the board of directors, or governing body of the local government unit, and the principal officers of the major participating entity and each shareholder beneficially owning more than ten percent of any voting stock of the major participating entity;

The commissioner may by rule identify persons included in the term "principal officers";

(d) a full disclosure of the extent and nature of any contract or financial arrangements between the following:

(1) the health maintenance organization and the persons listed in clause (c)(1);

(2) the health maintenance organization and the persons listed in clause (c)(2);

(3) each major participating entity and the persons listed in clause (c)(1) concerning any financial relationship with the health maintenance organization; and

(4) each major participating entity and the persons listed in clause (c)(2) concerning any financial relationship with the health maintenance organization;

(e) the name and address of each participating entity and the agreed upon duration of each contract or agreement;

(f) a copy of the form of each contract binding the participating entities and the health maintenance organization. Contractual provisions shall be consistent with the purposes of sections 62D.01 to 62D.30, in regard to the services to be performed under the contract, the manner in which payment for services is determined, the nature and extent of responsibilities to be retained by the health maintenance organization, the nature and extent of risk sharing permissible, and contractual termination provisions;

(g) a copy of each contract binding major participating entities and the health maintenance organization. Contract information filed with the commissioner shall be confidential and subject to the provisions of section 13.37, subdivision 1, clause (b), upon the request of the health maintenance organization.

Upon initial filing of each contract, the health maintenance organization shall file a separate document detailing the projected annual expenses to the major participating entity in performing the contract and the projected annual revenues received by the entity from the health maintenance organization for such performance. The commissioner shall disapprove any contract with a major participating entity if the contract will result in an unreasonable expense under section 62D.19. The commissioner shall approve or disapprove a contract within 30 days of filing.

Within 120 days of the anniversary of the implementation of each contract, the health maintenance organization shall file a document detailing the actual expenses incurred and reported by the major participating entity in performing the contract in the preceding year and the actual revenues received from the health maintenance organization by the entity in payment for the performance;

(h) a statement generally describing the health maintenance organization, its health maintenance contracts and separate health service contracts, facilities, and personnel, including a statement describing the manner in which the applicant proposes to provide enrollees with comprehensive health maintenance services and separate health services;

(i) a copy of the form of each evidence of coverage to be issued to the enrollees;

(j) a copy of the form of each individual or group health maintenance contract and each separate health service contract which is to be issued to enrollees or their representatives;

(k) financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement may be deemed to satisfy this requirement;

(l) a description of the proposed method of marketing the plan, a schedule of proposed charges, and a financial plan which includes a three-year projection of the expenses and income and other sources of future capital;

(m) a statement reasonably describing the geographic area or areas to be served and the type or types of enrollees to be served;

(n) a description of the complaint procedures to be utilized as required under section 62D.11;

(o) a description of the procedures and programs to be implemented to meet the requirements of section 62D.04, subdivision 1, clauses (b) and (c) and to monitor the quality of health care provided to enrollees;

(p) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under section 62D.06;

(q) a copy of any agreement between the health maintenance organization and an insurer or nonprofit health service corporation regarding reinsurance, stop-loss coverage, insolvency coverage, or any other type of coverage for potential costs of health services, as authorized in sections 62D.04, subdivision 1, clause (f), 62D.05, subdivision 3, and 62D.13;

(r) a copy of the conflict of interest policy which applies to all members of the board of directors and the principal officers of the health maintenance organization, as described in section 62D.04, subdivision 1, paragraph (g). All currently licensed health maintenance organizations shall also file a conflict of interest policy with the commissioner within 60 days after August 1, 1990, or at a later date if approved by the commissioner;

(s) a copy of the statement that describes the health maintenance organization's prior authorization administrative procedures; and

(t) ~~a copy of the agreement between the guaranteeing organization and the health maintenance organization, as described in section 62D.043, subdivision 6; and~~

~~(u)~~ other information as the commissioner of health may reasonably require to be provided.

Sec. 3. Minnesota Statutes 2004, section 62D.30, subdivision 8, is amended to read:

Subd. 8. **Rural demonstration project.** (a) The commissioner may permit demonstration projects to allow health maintenance organizations to extend coverage to a health improvement and purchasing coalition located in rural Minnesota, comprised of the health maintenance organization and members from a geographic area. For purposes of this subdivision, rural is defined as greater Minnesota excluding the seven-county metropolitan area of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. The coalition must be designed in such a way that members will:

(1) become better informed about health care trends and cost increases;

(2) be actively engaged in the design of health benefit options that will meet the needs of their community;

(3) pool their insurance risk;

(4) purchase these products from the health maintenance organization involved in the demonstration project; and

(5) actively participate in health improvement decisions for their community.

(b) The commissioner must consider the following when approving applications for rural demonstration projects:

(1) the extent of consumer involvement in development of the project;

(2) the degree to which the project is likely to reduce the number of uninsured or to maintain existing coverage; and

(3) a plan to evaluate and report to the commissioner and legislature as prescribed by paragraph (e).

(c) For purposes of this subdivision, the commissioner must waive compliance with the following statutes and rules: the cost-sharing restrictions under section 62D.095, subdivisions 2, 3, and 4, and Minnesota Rules, part 4685.0801, subparts 1 to 7; for a period of at least two years, participation in government programs under section 62D.04, subdivision 5, in the counties of the demonstration project if that compliance would have been required solely due to participation in the demonstration project and shall continue to waive this requirement beyond two years if the enrollment in the demonstration project is less than 10,000 enrollees; small employer marketing under section 62L.05, subdivisions 1 to 3; and small employer geographic premium variations under section 62L.08, subdivision 4. The commissioner shall approve enrollee cost-sharing features desired by the coalition that appropriately share costs between employers, individuals, and the health maintenance organization.

(d) The health maintenance organization may make the starting date of the project contingent upon a minimum number of enrollees as cited in the application, provide

for an initial term of contract with the purchasers of a minimum of three years, and impose a reasonable penalty for employers who withdraw early from the project. For purposes of this subdivision, loss ratios are to be determined as if the policies issued under this section are considered individual or small employer policies pursuant to section 62A.021, subdivision 1, paragraph (f). The health maintenance organization may consider businesses of one to be a small employer under section 62L.02, subdivision 26. The health maintenance organization may limit enrollment and establish enrollment criteria for businesses of one. Health improvement and purchasing coalitions under this subdivision are not associations under section 62L.045, subdivision 1, paragraph (a).

(e) The health improvement and purchasing coalition must report to the commissioner and legislature annually on the progress of the demonstration project and, to the extent possible, any significant findings in the criteria listed in clauses (1), (2), and (3) for the final report. The coalition must submit a final report five years from the starting date of the project. The final report must detail significant findings from the project and must include, to the extent available, but should not be limited to, information on the following:

(1) the extent to which the project had an impact on the number of uninsured in the project area;

(2) the effect on health coverage premiums for groups in the project's geographic area, including those purchasing health coverage outside the health improvement and purchasing coalition; and

(3) the degree to which health care consumers were involved in the development and implementation of the demonstration project.

(f) The commissioner must limit the number of demonstration projects under this subdivision to five projects.

(g) Approval of the application for the demonstration project is deemed to be in compliance with ~~sections 62E.03 and~~ section 62E.06, subdivisions 1, paragraph (a), 2, and 3.

(h) Subdivisions 2 to 7 apply to demonstration projects under this subdivision. Waivers permitted under subdivision 1 do not apply to demonstration projects under this subdivision.

(i) If a demonstration project under this subdivision works in conjunction with a purchasing alliance formed under chapter 62T, that chapter will apply to the purchasing alliance except to the extent that chapter 62T is inconsistent with this subdivision.

Sec. 4. Minnesota Statutes 2004, section 62Q.19, subdivision 2, is amended to read:

Subd. 2. **Application.** (a) Any provider may apply to the commissioner for designation as an essential community provider by submitting an application form developed by the commissioner. Except as provided in ~~paragraphs~~ paragraph (d) ~~and (c)~~, applications must be accepted within two years after the effective date of the rules adopted by the commissioner to implement this section.

(b) Each application submitted must be accompanied by an application fee in an amount determined by the commissioner. The fee shall be no more than what is needed to cover the administrative costs of processing the application.

(c) The name, address, contact person, and the date by which the commissioner's decision is expected to be made shall be classified as public data under section 13.41. All other information contained in the application form shall be classified as private data under section 13.41 until the application has been approved, approved as modified, or denied by the commissioner. Once the decision has been made, all information shall be classified as public data unless the applicant designates and the commissioner determines that the information contains trade secret information.

(d) The commissioner shall accept an application for designation as an essential community provider until June 30, 2004, from one applicant that is a nonprofit community services agency certified as a medical assistance provider that provides mental health, behavioral health, chemical dependency, employment, and health wellness services to the underserved Spanish-speaking Latino families and individuals with locations in Minneapolis and St. Paul.

Sec. 5. Minnesota Statutes 2004, section 82.50, subdivision 7, is amended to read:

Subd. 7. **Interest bearing accounts.** Notwithstanding the provisions of ~~sections 82.17, 82.19 to 82.39, 82.41, and 82.42~~ this chapter, a real estate broker may establish and maintain interest bearing accounts for the purpose of receiving deposits in accordance with the provisions of section 504B.178.

Sec. 6. Minnesota Statutes 2004, section 103F.205, subdivision 1, is amended to read:

Subdivision 1. **Applicability.** The definitions in this section apply to sections 103F.201 to ~~103F.225~~ 103F.221.

Sec. 7. Minnesota Statutes 2004, section 103G.293, is amended to read:

103G.293 STATEWIDE DROUGHT PLAN.

The commissioner shall establish a plan to respond to drought-related emergencies and to prepare a statewide framework for drought response. The plan must consider

metropolitan water supply plans of the Metropolitan Council prepared under section ~~473.156~~ 473.1565. The plan must provide a framework for implementing drought response actions in a staged approach related to decreasing levels of flows. Permits issued under section 103G.271 must provide conditions on water appropriation consistent with the drought response plan established by this section.

Sec. 8. Minnesota Statutes 2004, section 115A.0716, subdivision 3, is amended to read:

Subd. 3. **Revolving account.** All repayments of loans awarded under this ~~subdivision~~ section, including principal and interest, must be credited to the environmental fund. Money deposited in the fund under this section is annually appropriated to the director for loans for purposes identified in subdivisions 1 and 2.

Sec. 9. Minnesota Statutes 2005 Supplement, section 116J.575, subdivision 1, is amended to read:

Subdivision 1. **Commissioner discretion.** The commissioner may make a grant for up to 50 percent of the eligible costs of a project. The determination of whether to make a grant for a site is within the discretion of the commissioner, subject to this section and sections 116J.571 to 116J.574 and available unencumbered money in the redevelopment account. ~~Notwithstanding section 116J.573,~~ If the commissioner determines that the applications for grants for projects in greater Minnesota are less than the amount of grant funds available, the commissioner may make grants for projects anywhere in Minnesota. The commissioner's decisions and application of the priorities under this section are not subject to judicial review, except for abuse of discretion.

Sec. 10. Minnesota Statutes 2005 Supplement, section 144.225, subdivision 7, is amended to read:

Subd. 7. **Certified birth or death record.** (a) The state or local registrar shall issue a certified birth or death record or a statement of no vital record found to an individual upon the individual's proper completion of an attestation provided by the commissioner:

(1) to a person who has a tangible interest in the requested vital record. A person who has a tangible interest is:

(i) the subject of the vital record;

(ii) a child of the subject;

(iii) the spouse of the subject;

(iv) a parent of the subject;

(v) the grandparent or grandchild of the subject;

(vi) if the requested record is a death record, a sibling of the subject;

(vii) the party responsible for filing the vital record;

(viii) the legal custodian or guardian or conservator of the subject;

(ix) a personal representative, by sworn affidavit of the fact that the certified copy is required for administration of the estate;

(x) a successor of the subject, as defined in section 524.1-201, if the subject is deceased, by sworn affidavit of the fact that the certified copy is required for administration of the estate;

(xi) if the requested record is a death record, a trustee of a trust by sworn affidavit of the fact that the certified copy is needed for the proper administration of the trust;

(xii) a person or entity who demonstrates that a certified vital record is necessary for the determination or protection of a personal or property right, pursuant to rules adopted by the commissioner; or

(xiii) adoption agencies in order to complete confidential postadoption searches as required by section 259.83;

(2) to any local, state, or federal governmental agency upon request if the certified vital record is necessary for the governmental agency to perform its authorized duties. An authorized governmental agency includes the Department of Human Services, the Department of Revenue, and the United States Immigration and Naturalization Service;

(3) to an attorney upon evidence of the attorney's license;

(4) pursuant to a court order issued by a court of competent jurisdiction. For purposes of this section, a subpoena does not constitute a court order; or

(5) to a representative authorized by a person under clauses (1) to (4).

(b) The state or local registrar shall also issue a certified death record to an individual described in paragraph (a), clause (1), items (ii) to ~~(vii)~~ (viii), if, on behalf of the individual, a licensed mortician furnishes the registrar with a properly completed attestation in the form provided by the commissioner within 180 days of the time of death of the subject of the death record. This paragraph is not subject to the requirements specified in Minnesota Rules, part 4601.2600, subpart 5, item B.

Sec. 11. Minnesota Statutes 2005 Supplement, section 144.335, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them:

(a) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the

surviving spouse and parents of a deceased patient, or a person the patient appoints in writing as a representative, including a health care agent acting pursuant to chapter 145C, unless the authority of the agent has been limited by the principal in the principal's health care directive. Except for minors who have received health care services pursuant to sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

(b) "Provider" means (1) any person who furnishes health care services and is regulated to furnish the services pursuant to chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148C, 148D, 150A, 151, 153, or 153A~~, or Minnesota Rules, chapter 4666~~; (2) a home care provider licensed under section 144A.46; (3) a health care facility licensed pursuant to this chapter or chapter 144A; (4) a physician assistant registered under chapter 147A; and (5) an unlicensed mental health practitioner regulated pursuant to sections 148B.60 to 148B.71.

(c) "Individually identifiable form" means a form in which the patient is or can be identified as the subject of the health records.

Sec. 12. Minnesota Statutes 2005 Supplement, section 144.602, subdivision 1, is amended to read:

Subdivision 1. **Applicability.** For purposes of sections ~~144.601~~ 144.602 to 144.608, the terms defined in this section have the meanings given them.

Sec. 13. Minnesota Statutes 2004, section 145A.09, subdivision 4, is amended to read:

Subd. 4. **Cities.** A city ~~that received a subsidy under section 145A.13 and~~ that meets the requirements of sections 145A.09 to 145A.131 is eligible for a local public health grant under section 145A.131.

Sec. 14. Minnesota Statutes 2005 Supplement, section 148B.60, subdivision 3, is amended to read:

Subd. 3. **Unlicensed mental health practitioner or practitioner.** "Unlicensed mental health practitioner" or "practitioner" means a person who provides or purports to provide, for remuneration, mental health services as defined in subdivision 4. It does not include persons licensed by the Board of Medical Practice under chapter 147 or registered by the Board of Medical Practice under chapter 147A; the Board of Nursing under sections 148.171 to 148.285; the Board of Psychology under sections 148.88 to 148.98; the Board of Social Work under ~~sections 148B.18 to 148B.289~~ chapter 148D; the Board of Marriage and Family Therapy under sections 148B.29 to 148B.39; the Board of Behavioral Health

and Therapy under sections 148B.50 to 148B.593 and chapter 148C; or another licensing board if the person is practicing within the scope of the license; members of the clergy who are providing pastoral services in the context of performing and fulfilling the salaried duties and obligations required of a member of the clergy by a religious congregation; American Indian medicine men and women; licensed attorneys; probation officers; school counselors employed by a school district while acting within the scope of employment as school counselors; licensed occupational therapists; or licensed occupational therapy assistants. For the purposes of complaint investigation or disciplinary action relating to an individual practitioner, the term includes:

(1) persons employed by a program licensed by the commissioner of human services who are acting as mental health practitioners within the scope of their employment;

(2) persons employed by a program licensed by the commissioner of human services who are providing chemical dependency counseling services; persons who are providing chemical dependency counseling services in private practice; and

(3) clergy who are providing mental health services that are equivalent to those defined in subdivision 4.

Sec. 15. Minnesota Statutes 2005 Supplement, section 148D.240, subdivision 5, is amended to read:

Subd. 5. **Failure to report other applicants or licensees and unlicensed practice.** The board has grounds to take action under sections 148D.255 to ~~148.270~~ 148D.270 when an applicant or licensee fails to report to the board conduct:

(1) by another licensee or applicant which the applicant or licensee has reason to believe may reasonably constitute grounds for disciplinary action under this section; or

(2) by an unlicensed person that constitutes the practice of social work when a license is required to practice social work.

Sec. 16. Minnesota Statutes 2005 Supplement, section 237.763, is amended to read:

237.763 EXEMPTION FROM EARNINGS REGULATION AND INVESTIGATION.

Except as provided in the plan and any subsequent plans, a company that has an alternative regulation plan approved under section 237.764, is not subject to the rate-of-return regulation or earnings investigations provisions of section 237.075 or 237.081 during the term of the plan. A company with an approved plan is not subject to the provisions of section 237.57; 237.59; or 237.60, subdivisions 1, 2, 4, and 5~~; or 237.65~~, during the term of the plan. Except as specifically provided in this section or

in the approved plan, the commission retains all of its authority under section 237.081 to investigate other matters and to issue appropriate orders, and the department retains its authority under sections 216A.07 and 237.15 to investigate matters other than the earnings of the company.

Sec. 17. Minnesota Statutes 2005 Supplement, section 245C.15, subdivision 3, is amended to read:

Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); 609.3451 (criminal sexual conduct in the fifth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); ~~609.446~~ 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary); 609.611 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (harassment; stalking); repeat offenses under 617.23 (indecent exposure); 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

(b) An individual is disqualified under section 245C.14 if less than ten years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section 245C.14 if less than ten years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

(d) If the defendant is convicted of one of the gross misdemeanors listed in paragraph (a), but the sentence is a misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the conviction is the period applicable to misdemeanors.

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Sec. 18. Minnesota Statutes 2004, section 256.9831, subdivision 1, is amended to read:

Subdivision 1. **Definition.** For purposes of this section, "gambling establishment" means ~~a bingo hall licensed under section 349.164,~~ a racetrack licensed under section 240.06 or 240.09, a casino operated under a tribal-state compact under section 3.9221, or any other establishment that receives at least 50 percent of its gross revenue from the conduct of gambling.

Sec. 19. Minnesota Statutes 2004, section 256B.0917, subdivision 13, is amended to read:

Subd. 13. **Community service grants.** The commissioner shall award contracts for grants to public and private nonprofit agencies to establish services that strengthen a community's ability to provide a system of home and community-based services for elderly persons. The commissioner shall use a request for proposal process. The commissioner shall give preference when awarding grants under this section to areas where nursing facility closures have occurred or are occurring. The commissioner shall consider grants for:

(1) caregiver support and respite care projects under subdivision 6;

~~(2) on-site coordination under section 256.9731;~~

~~(3)~~ (2) the living-at-home/block nurse grant under subdivisions 7 to 10; and

~~(4)~~ (3) services identified as needed for community transition.

Sec. 20. Minnesota Statutes 2004, section 256B.093, subdivision 3a, is amended to read:

Subd. 3a. **Traumatic brain injury case management services.** The annual appropriation established under section 171.29, subdivision 2, paragraph ~~(b), clause (5)~~ (c), shall be used for traumatic brain injury program services that include, but are not limited to:

(1) collaborating with counties, providers, and other public and private organizations to expand and strengthen local capacity for delivering needed services and supports, including efforts to increase access to supportive residential housing options;

(2) participating in planning and accessing services not otherwise covered in subdivision 3 to allow individuals to attain and maintain community-based services;

(3) providing information, referral, and case consultation to access health and human services for persons with traumatic brain injury not eligible for medical assistance, though direct access to this assistance may be limited due to the structure of the program; and

(4) collaborating on injury prevention efforts.

Sec. 21. Minnesota Statutes 2005 Supplement, section 256B.441, subdivision 13, is amended to read:

Subd. 13. **External fixed costs category.** "External fixed costs category" means costs related to the nursing home surcharge under section 256.9657, subdivision 1; licensure fees under section 144.122; long-term care consultation fees under section 256B.0911, subdivision 6; family advisory council fee under section ~~144A.35~~ 144A.33; scholarships under section 256B.431, subdivision 36; planned closure rate adjustments under section 256B.437; property taxes and property insurance; and PERA.

Sec. 22. Minnesota Statutes 2004, section 256J.88, is amended to read:

256J.88 CHILD ONLY TANF PROGRAM.

Children who receive assistance under this chapter, in which the assistance unit does not include a caregiver, but only includes a minor child, shall become part of the program established under this ~~section~~ chapter.

Sec. 23. Minnesota Statutes 2004, section 273.03, subdivision 3, is amended to read:

Subd. 3. **Applicability of other laws.** All laws or parts of laws, now or hereafter effective, not inconsistent with this section and sections 273.17, ~~274.04, 274.05,~~ 275.28, and 276.01, as amended, shall continue in full force and effect.

Sec. 24. Minnesota Statutes 2004, section 273.111, subdivision 3, is amended to read:

Subd. 3. **Requirements.** (a) Real estate consisting of ten acres or more or a nursery or greenhouse, and qualifying for classification as class 1b, 2a, or 2b under section 273.13, ~~subdivision 23, paragraph (d),~~ shall be entitled to valuation and tax deferment under this section only if it is primarily devoted to agricultural use, and meets the qualifications in subdivision 6, and either:

(1) is the homestead of the owner, or of a surviving spouse, child, or sibling of the owner or is real estate which is farmed with the real estate which contains the homestead property; or

(2) has been in possession of the applicant, the applicant's spouse, parent, or sibling, or any combination thereof, for a period of at least seven years prior to application for benefits under the provisions of this section, or is real estate which is farmed with the real estate which qualifies under this clause and is within four townships or cities or combination thereof from the qualifying real estate; or

(3) is the homestead of a shareholder in a family farm corporation as defined in section 500.24, notwithstanding the fact that legal title to the real estate may be held in the name of the family farm corporation; or

(4) is in the possession of a nursery or greenhouse or an entity owned by a proprietor, partnership, or corporation which also owns the nursery or greenhouse operations on the parcel or parcels.

(b) Valuation of real estate under this section is limited to parcels the ownership of which is in noncorporate entities except for:

(1) family farm corporations organized pursuant to section 500.24; and

(2) corporations that derive 80 percent or more of their gross receipts from the wholesale or retail sale of horticultural or nursery stock.

Corporate entities who previously qualified for tax deferment pursuant to this section and who continue to otherwise qualify under subdivisions 3 and 6 for a period of at least three years following the effective date of Laws 1983, chapter 222, section 8, will not be required to make payment of the previously deferred taxes, notwithstanding the provisions of subdivision 9. Special assessments are payable at the end of the three-year period or at time of sale, whichever comes first.

(c) Land that previously qualified for tax deferment under this section and no longer qualifies because it is not primarily used for agricultural purposes but would otherwise qualify under subdivisions 3 and 6 for a period of at least three years will not be required to make payment of the previously deferred taxes, notwithstanding the provisions of subdivision 9. Sale of the land prior to the expiration of the three-year period requires

payment of deferred taxes as follows: sale in the year the land no longer qualifies requires payment of the current year's deferred taxes plus payment of deferred taxes for the two prior years; sale during the second year the land no longer qualifies requires payment of the current year's deferred taxes plus payment of the deferred taxes for the prior year; and sale during the third year the land no longer qualifies requires payment of the current year's deferred taxes. Deferred taxes shall be paid even if the land qualifies pursuant to subdivision 11a. When such property is sold or no longer qualifies under this paragraph, or at the end of the three-year period, whichever comes first, all deferred special assessments plus interest are payable in equal installments spread over the time remaining until the last maturity date of the bonds issued to finance the improvement for which the assessments were levied. If the bonds have matured, the deferred special assessments plus interest are payable within 90 days. The provisions of section 429.061, subdivision 2, apply to the collection of these installments. Penalties are not imposed on any such special assessments if timely paid.

Sec. 25. Minnesota Statutes 2005 Supplement, section 289A.42, subdivision 1, is amended to read:

Subdivision 1. **Extension agreement.** If before the expiration of time prescribed in sections 270C.58, subdivision ~~13~~ 3, 289A.38, and 289A.40 for the assessment of tax or the filing of a claim for refund, both the commissioner and the taxpayer have consented in writing to the assessment or filing of a claim for refund after that time, the tax may be assessed or the claim for refund filed at any time before the expiration of the agreed upon period. The period may be extended by later agreements in writing before the expiration of the period previously agreed upon. The taxpayer and the commissioner may also agree to extend the period for collection of the tax.

Sec. 26. Minnesota Statutes 2004, section 290.48, subdivision 10, is amended to read:

Subd. 10. **Presumptions where owner of large amount of cash is not identified.** (a) If the individual who is in physical possession of cash in excess of $10,000 does not claim such cash, or does not claim it belongs to another person whose identity the commissioner can readily ascertain and who acknowledges ownership of such cash, then, for purposes of ~~subdivisions 3 and 4~~ section 270C.36, it shall be presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

(b) In the case of any assessment resulting from the application of clause (a), the entire amount of the cash shall be treated as taxable income for the taxable year in which

the possession occurs, such income shall be treated as taxable at an eight percent rate, and except as provided in clause (c), the possessor of the cash shall be treated (solely with respect to the cash) as the taxpayer for purposes of this chapter and the assessment and collection of the tax.

(c) If, after an assessment resulting from the application of clause (a), the assessment is abated and replaced by an assessment against the owner of the cash, the later assessment shall be treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment.

(d) For purposes of this subdivision, the definitions contained in section 6867 of the Internal Revenue Code shall apply.

Sec. 27. Minnesota Statutes 2004, section 295.50, subdivision 10b, is amended to read:

Subd. 10b. **Regional treatment center.** "Regional treatment center" means a regional center as defined in section 253B.02, subdivision 18, and named in sections ~~252.025, subdivision 1;~~ 253.015, subdivision 1~~; 253.201;~~, and 254.05.

Sec. 28. Minnesota Statutes 2005 Supplement, section 296A.22, subdivision 9, is amended to read:

Subd. 9. **Abatement of penalty.** (a) The commissioner may by written order abate any penalty imposed under this section, if in the commissioner's opinion there is reasonable cause to do so.

(b) A request for abatement of penalty must be filed with the commissioner within 60 days of the date the notice stating that a penalty has been imposed was mailed to the taxpayer's last known address.

(c) If the commissioner issues an order denying a request for abatement of penalty, the taxpayer may file an administrative appeal as provided in section ~~296A.25~~ 270C.35 or appeal to Tax Court as provided in section 271.06. If the commissioner does not issue an order on the abatement request within 60 days from the date the request is received, the taxpayer may appeal to Tax Court as provided in section 271.06.

Sec. 29. Minnesota Statutes 2004, section 297E.01, subdivision 8, is amended to read:

Subd. 8. **Gross receipts.** "Gross receipts" means all receipts derived from lawful gambling activity including, but not limited to, the following items:

(1) gross sales of bingo hard cards and paper sheets before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;

(2) the ideal gross of pull-tab and tipboard deals or games less the value of unsold and defective tickets and before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;

(3) gross sales of raffle tickets and paddle tickets before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;

(4) admission, commission, cover, or other charges imposed on participants in lawful gambling activity as a condition for or cost of participation; and

(5) interest, dividends, annuities, profit from transactions, or other income derived from the accumulation or use of gambling proceeds.

Gross receipts does not include proceeds from rental under section ~~349.164 or~~ 349.18, subdivision 3.

Sec. 30. Minnesota Statutes 2004, section 299A.80, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For purposes of sections 299A.80 to 299A.802, the terms defined in this subdivision have the meanings given them.

(b) "Administrative agent" means a person or entity licensed by or granted authority by the commissioner of public safety under:

(1) section 168.33 as a deputy registrar; or

(2) ~~section 168C.11 as a deputy registrar of bicycles; or~~

~~(3)~~ section 171.061 as a driver's license agent.

(c) "Other authority" means licenses, orders, stipulation agreements, settlements, or compliance agreements adopted or issued by the commissioner of public safety.

(d) "Commissioner" means the commissioner of public safety.

(e) "License" means a license, permit, registration, appointment, or certificate issued or granted to an administrative agent by the commissioner of public safety.

Sec. 31. Minnesota Statutes 2004, section 349.12, subdivision 21, is amended to read:

Subd. 21. **Gross receipts.** "Gross receipts" means all receipts derived from lawful gambling activity including, but not limited to, the following items:

(1) gross sales of bingo hard cards and paper sheets before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;

(2) the ideal gross of pull-tab and tipboard deals or games less the value of unsold and defective tickets and before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;

(3) gross sales of raffle tickets and paddletickets before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;

(4) admission, commission, cover, or other charges imposed on participants in lawful gambling activity as a condition for or cost of participation; and

(5) interest, dividends, annuities, profit from transactions, or other income derived from the accumulation or use of gambling proceeds.

Gross receipts does not include proceeds from rental under section ~~349.164 or~~ 349.18, subdivision 3.

Sec. 32. Minnesota Statutes 2005 Supplement, section 349.153, is amended to read:

349.153 CONFLICT OF INTEREST.

(a) A person may not serve on the board, be the director, or be an employee of the board who has an interest in any corporation, association, limited liability company, or partnership that is licensed by the board as a distributor; or manufacturer~~, or linked bingo game provider under section 349.164~~.

(b) A member of the board, the director, or an employee of the board may not accept employment with, receive compensation directly or indirectly from, or enter into a contractual relationship with an organization that conducts lawful gambling, a distributor, a linked bingo game provider, or a manufacturer while employed with or a member of the board or within one year after terminating employment with or leaving the board.

(c) A distributor, manufacturer, linked bingo game provider, or organization licensed to conduct lawful gambling may not hire a former employee, director, or member of the Gambling Control Board for one year after the employee, director, or member has terminated employment with or left the Gambling Control Board.

Sec. 33. Minnesota Statutes 2004, section 353.27, subdivision 9, is amended to read:

Subd. 9. **Fee officers; contributions; obligations of employers.** Any appointed or elected officer of a governmental subdivision who was or is a "public employee" within the meaning of section 353.01 and was or is a member of the fund and whose salary was or is paid in whole or in part from revenue derived by fees and assessments, shall pay employee contribution in the amount, at the time, and in the manner provided in subdivisions 2 and 4. This subdivision shall not apply to district court reporters. The employer contribution as provided in subdivision 3, and the additional employer contribution as provided in subdivision 3a, ~~and section 353.36, subdivision 2a,~~ with respect to such service shall be paid by the governmental subdivision. This subdivision shall have both retroactive and prospective application as to all such members; and every employing governmental subdivision is deemed liable, retroactively and prospectively, for

all employer and additional employer contributions for every such member in its employ. Delinquencies under this section shall be governed in all respects by section 353.28.

Sec. 34. Minnesota Statutes 2004, section 353.33, subdivision 1, is amended to read:

Subdivision 1. **Age, service, and salary requirements.** A coordinated member who has at least three years of allowable service and becomes totally and permanently disabled before normal retirement age, and a basic member who has at least three years of allowable service and who becomes totally and permanently disabled is entitled to a disability benefit in an amount under subdivision 3. If the disabled person's public service has terminated at any time, at least two of the required three years of allowable service must have been rendered after last becoming a member. A repayment of a refund must be made within six months after the effective date of disability benefits under subdivision 2 or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under section 353.01, subdivision 16, or 353.017, subdivision 4, ~~or 353.36, subdivision 2,~~ may be made after the occurrence of the disability for which an application under this section is filed.

Sec. 35. Minnesota Statutes 2004, section 353.656, subdivision 8, is amended to read:

Subd. 8. **Application procedure to determine eligibility for police and fire plan disability benefits.** (a) An application for disability benefits must be made in writing on a form or forms prescribed by the executive director.

(b) If an application for disability benefits is filed within two years of the date of the injury or the onset of the illness that gave rise to the disability application, the application must be supported by evidence that the applicant is unable to perform the duties of the position held by the applicant on the date of the injury or the onset of the illness causing the disability. The employer must provide evidence indicating whether the applicant is able or unable to perform the duties of the position held on the date of the injury or onset of illness causing the disability and the specifications of any duties that the individual can or cannot perform.

(c) If an application for disability benefits is filed more than two years after the date of the injury or the onset of an illness causing the disability, the application must be supported by evidence that the applicant is unable to perform the most recent duties that are expected to be performed by the applicant during the 90 days before the filing of the application. The employer must provide evidence of the duties that are expected to be performed by the applicant during the 90 days before the filing of the application, whether

the applicant can or cannot perform those duties overall, and the specifications of any duties that the applicant can or cannot perform.

(d) Unless otherwise permitted by law, no application for disability benefits can be filed by a former member of the police and fire plan more than three years after the former member has terminated from Public Employees Retirement Association police and fire plan covered employment. If an application is filed within three years after the termination of public employment, the former member must provide evidence that the disability is the direct result of an injury or the contracting of an illness that occurred while the person was still actively employed and participating in the police and fire plan.

(e) Any application for duty-related disability must be supported by a first report of injury as defined in section 176.231.

(f) If a member who has applied for and been approved for disability benefits before the termination of service does not terminate service or is not placed on an authorized leave of absence as certified by the governmental subdivision within 45 days following the date on which the application is approved, the application shall be canceled. If an approved application for disability benefits has been canceled, a subsequent application for disability benefits may not be filed on the basis of the same medical condition for a minimum of one year from the date on which the previous application was canceled.

(g) An applicant may file a retirement application under section 353.29, subdivision 4, at the same time as the disability application is filed. If the disability application is approved, the retirement application is canceled. If the disability application is denied, the retirement application must be initiated and processed upon the request of the applicant. A police and fire fund member may not receive a disability benefit and a retirement annuity from the police and fire fund at the same time.

(h) A repayment of a refund must be made within six months after the effective date of disability benefits or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under section 353.01 ~~or 353.36, subdivision 2,~~ may be made after the occurrence of the disability for which an application is filed under this section.

Sec. 36. Minnesota Statutes 2004, section 354.05, subdivision 13, is amended to read:

Subd. 13. **Allowable service.** "Allowable service" means:

(1) Any service rendered by a teacher for which on or before July 1, 1957, the teacher's account in the retirement fund was credited by reason of employee contributions in the form of salary deductions, payments in lieu of salary deductions, or in any other

manner authorized by Minnesota Statutes 1953, sections 135.01 to 135.13, as amended by Laws 1955, chapters 361, 549, 550, 611, or

(2) Any service rendered by a teacher for which on or before July 1, 1961, the teacher elected to obtain credit for service by making payments to the fund pursuant to Minnesota Statutes 1980, section 354.09 and section 354.51, or

(3) Any service rendered by a teacher after July 1, 1957, for any calendar month when the member receives salary from which deductions are made, deposited and credited in the fund, or

(4) Any service rendered by a person after July 1, 1957, for any calendar month where payments in lieu of salary deductions are made, deposited and credited into the fund as provided in Minnesota Statutes 1980, section 354.09, subdivision 4, and section 354.53, or

(5) Any service rendered by a teacher for which the teacher elected to obtain credit for service by making payments to the fund pursuant to Minnesota Statutes 1980, section 354.09, subdivisions 1 and 4, sections 354.50, 354.51, Minnesota Statutes 1957, section 135.41, subdivision 4, Minnesota Statutes 1971, section 354.09, subdivision 2, or Minnesota Statutes, 1973 Supplement, section 354.09, subdivision 3, or

(6) Both service during years of actual membership in the course of which contributions were currently made and service in years during which the teacher was not a member but for which the teacher later elected to obtain credit by making payments to the fund as permitted by any law then in effect, or

(7) Any service rendered where contributions were made and no allowable service credit was established because of the limitations contained in Minnesota Statutes 1957, section 135.09, subdivision 2, as determined by the ratio between the amounts of money credited to the teacher's account in a fiscal year and the maximum retirement contribution allowable for that year, or

(8) MS 2002 (Expired)

(9) A period of time during which a teacher who is a state employee was on strike without pay, not to exceed a period of one year, if the teacher makes a payment in lieu of salary deductions or makes a prior service credit purchase payment, whichever applies. If the payment is made within 12 months, the payment by the teacher must be an amount equal to the employee and employer contribution rates set forth in section 354.42, subdivisions 2 and 3, applied to the teacher's rate of salary in effect on the conclusion of the strike for the period of the strike without pay, plus compound interest at a monthly rate of 0.71 percent from the last day of the strike until the date of payment. If the payment by

the employee is not made within 12 months, the payment must be in an amount equal to the payment amount determined under section ~~356.55 or~~ 356.551~~, whichever applies~~.

Sec. 37. Minnesota Statutes 2005 Supplement, section 357.021, subdivision 1a, is amended to read:

Subd. 1a. **Transmittal of fees to commissioner of finance.** (a) Every person, including the state of Minnesota and all bodies politic and corporate, who shall transact any business in the district court, shall pay to the court administrator of said court the sundry fees prescribed in subdivision 2. Except as provided in paragraph (d), the court administrator shall transmit the fees monthly to the commissioner of finance for deposit in the state treasury and credit to the general fund. $30 of each fee collected in a dissolution action under subdivision 2, clause (1), must be deposited by the commissioner of finance in the special revenue fund and is appropriated to the commissioner of employment and economic development for the displaced homemaker program under section 116L.96.

(b) In a county which has a screener-collector position, fees paid by a county pursuant to this subdivision shall be transmitted monthly to the county treasurer, who shall apply the fees first to reimburse the county for the amount of the salary paid for the screener-collector position. The balance of the fees collected shall then be forwarded to the commissioner of finance for deposit in the state treasury and credited to the general fund. In a county in a judicial district under section 480.181, subdivision 1, paragraph (b), which has a screener-collector position, the fees paid by a county shall be transmitted monthly to the commissioner of finance for deposit in the state treasury and credited to the general fund. A screener-collector position for purposes of this paragraph is an employee whose function is to increase the collection of fines and to review the incomes of potential clients of the public defender, in order to verify eligibility for that service.

(c) No fee is required under this section from the public authority or the party the public authority represents in an action for:

(1) child support enforcement or modification, medical assistance enforcement, or establishment of parentage in the district court, or in a proceeding under section 484.702;

(2) civil commitment under chapter 253B;

(3) the appointment of a public conservator or public guardian or any other action under chapters 252A and 525;

(4) wrongfully obtaining public assistance under section 256.98 or 256D.07, or recovery of overpayments of public assistance;

(5) court relief under ~~chapter 260~~ chapters 260, 260A, 260B, and 260C;

(6) forfeiture of property under sections 169A.63 and 609.531 to 609.5317;

(7) recovery of amounts issued by political subdivisions or public institutions under sections 246.52, 252.27, 256.045, 256.25, 256.87, 256B.042, 256B.14, 256B.15, 256B.37, 260B.331, and 260C.331, or other sections referring to other forms of public assistance;

(8) restitution under section 611A.04; or

(9) actions seeking monetary relief in favor of the state pursuant to section 16D.14, subdivision 5.

(d) $20 from each fee collected for child support modifications under subdivision 2, clause (13), must be transmitted to the county treasurer for deposit in the county general fund and $35 from each fee shall be credited to the state general fund. The fees must be used by the county to pay for child support enforcement efforts by county attorneys.

Sec. 38. Minnesota Statutes 2004, section 581.02, is amended to read:

581.02 APPLICATION, CERTAIN SECTIONS.

The provisions of sections 580.08, 580.09, 580.12, ~~580.16,~~ 580.22, 580.25, and 580.27, so far as they relate to the form of the certificate of sale, shall apply to and govern the foreclosure of mortgages by action.

Sec. 39. Minnesota Statutes 2005 Supplement, section 604A.33, subdivision 1, is amended to read:

Subdivision 1. **Application.** This section applies to residential treatment programs for children or group homes for children licensed under chapter 245A, residential services and programs for juveniles licensed under section 241.021, providers licensed pursuant to sections 144A.01 to 144A.33 or sections 144A.43 to ~~144A.48~~ 144A.47, personal care provider organizations under section 256B.0655, subdivision 1g, providers of day training and habilitation services under sections 252.40 to 252.46, board and lodging facilities licensed under chapter 157, intermediate care facilities for persons with mental retardation or related conditions, and other facilities licensed to provide residential services to persons with developmental disabilities.

Sec. 40. Minnesota Statutes 2004, section 609.671, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Agency" means the Pollution Control Agency.

(b) "Deliver" or "delivery" means the transfer of possession of hazardous waste, with or without consideration.

(c) "Dispose" or "disposal" has the meaning given it in section 115A.03, subdivision 9.

(d) "Hazardous air pollutant" means an air pollutant listed under United States Code, title 42, section 7412(b).

(e) "Hazardous waste" means any waste identified as hazardous under the authority of section 116.07, subdivision 4, except for those wastes exempted under Minnesota Rules, part 7045.0120, wastes generated under Minnesota Rules, part 7045.0213 ~~or 7045.0304~~, and household appliances.

(f) "Permit" means a permit issued by the Pollution Control Agency under chapter 115 or 116 or the rules promulgated under those chapters including interim status for hazardous waste facilities.

(g) "Solid waste" has the meaning given in section 116.06, subdivision 22.

(h) "Toxic pollutant" means a toxic pollutant on the list established under United States Code, title 33, section 1317.

Sec. 41. Minnesota Statutes 2004, section 626.5572, subdivision 2, is amended to read:

Subd. 2. **Abuse.** "Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:

(1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;

(2) the use of drugs to injure or facilitate crime as defined in section 609.235;

(3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and

(4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451.

A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;

(3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other

persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and

(4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section 245.825.

(c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

(d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section 253B.03 or ~~525.539 to 525.6199~~ 524.5-313, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:

(1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

(f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.

(g) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Sec. 42. Laws 2005, chapter 20, article 2, section 1, is amended to read:

Section 1. **TABLE OF ORIGINAL AND ADJUSTED AUTHORIZATIONS.**

Column A lists the citation to each law authorizing general obligation bonds since Laws 1983, chapter 323, section 6, to which a further adjustment is being made in this section.

The original authorization amount in each law is shown in column B opposite the citation of the law it appears in.

The original authorization amount in column B is hereby adjusted to the amount shown in column C. The adjustments resulting in the column C amount reflect specific changes to an authorization in law, executive vetoes sustained or not challenged, administrative action reflecting cancellation and abandonment of all or the unused balance from specific projects for which the proceeds of authorized bonds were intended to be used, and other action pursuant to law resulting in the adjusted authorizations shown in column C. The amounts shown in column C are validated as the lawful adjusted authorization for the cited law as of February 1, 2005, for all purposes for which the authorization is required or used.

Column A	Column B	Column C
L 1983, c 323, s 6	$ 30,000,000	$ 29,935,000
L 1987, c 400, s 25, subd 1	370,972,200	369,560,500
L 1987, c 400, s 25, subd 5	66,747,000	66,740,000
L 1989, c 300, art 1, s 23, subd 1	142,585,000	135,060,000
L 1991, c 354, art 11, s 2, subd 1	12,000,000	11,360,000
L 1992, c 558, s 28, subd 1	231,695,000	219,085,000
L 1992, c 558, s 28, subd 3	17,500,000	17,368,000
L 1993, c 373, s 19, subd 1	54,640,000	53,355,000
L 1993, c 373, s 19, subd 2	9,900,000	9,480,000
L 1994, c 643, s 31, subd 1	573,385,000	564,650,523
L 1994, c 643, s 31, subd 2	45,000,000	34,820,000
L 1995, 1SS c 2, art 1, s 14, subd 1	5,630,000	5,590,000
L 1996, c 463, s 27, subd 1	597,110,000	549,302,898
L 1997, c 246, s 10, subd 1	86,625,000	86,192,000
L 1997, 2SS c 2, s 12	55,305,000	38,308,054
L 1998, c 404, s 27, subd 1	463,795,000	104,478,674

L 1999, c 240, art 1, s 13, subd 1	139,510,000	111,905,000
L 1999, c 240, art 1, s 13, subd 2	10,440,000	- 0 -
L 1999, c 240, art 2, s 16, subd 1	372,400,000	367,418,000
L 2000, c 492, art 1, s 26, subd 1	426,870,000	487,730,000
L 2001, 1SS c 12, s 11, subd 1	99,205,000	98,205,000
L 2002, c 393, s 30, subd 1	920,235,000	567,312,000

Sec. 43. Laws 2005, First Special Session chapter 6, article 3, section 95, is amended to read:

Sec. 95. **REMEDIATION FOR CONVICTIONS.**

A court in which a conviction for an offense referred to in section ~~101~~ 93 occurred, must vacate the conviction, on its own motion, without cost to the person convicted, and must immediately notify the commissioner of public safety. The commissioner must then notify the person convicted that the conviction has been vacated and that the person's driving record has been purged of a violation of Minnesota Statutes, section 169.796, subdivision 3, or any other related suspension or violation, including driving after license suspension, for failure to comply with that subdivision.

MEMORANDUM OF EXPLANATION

ARTICLE 1

GENERAL PROVISIONS

Section 1. **Explanation.**

This section corrects a reference to the Minnesota Insurance Guaranty Association.

Sec. 2. **Explanation.**

This section corrects a reference to the Minnesota Insurance Guaranty Association.

Sec. 3. **Explanation.**

Neither the department nor the commissioner of commerce has any duties or responsibilities relating to social or charitable organizations (chapter 309) since the enactment of Laws 1993, chapter 192, section 86.

Sec. 4. **Explanation.**

United States Code, title 45, section 228b(a)5, was omitted from federal law under the Railroad Retirement Act of 1974, Public Law 93-445. The section was restated under United States Code, title 45, section 231a(a)(1)(v).

Sec. 5. **Explanation.**

This amendment corrects an erroneous reference. The Office of Enterprise Technology is no longer part of the Department of Administration.

Sec. 6. **Explanation.**

This amendment corrects a typographical error.

Sec. 7. **Explanation.**

The Public Utilities Commission has not had jurisdiction over motor carriers for many years. This change reflects the actual authority for proratable registration in Minnesota.

Sec. 8. **Explanation.**

This amendment corrects an oversight in Laws 2005, First Special Session chapter 6, article 2, section 26, subdivision 2. The amendment lengthened the period of years allowing a corporation to act as a deputy registrar in the first sentence of paragraph (g) but

neglected to make the necessary change to parallel provisions later in the same paragraph. This change removes the resulting conflict in the law and corrects the oversight.

Sec. 9. **Explanation.**

This amendment clarifies that the term "authorized emergency vehicle" includes tow trucks and does not inadvertently exclude police, fire department, and other emergency vehicles listed and described in the term's definition.

Sec. 10. **Explanation.**

This change is the same as amendments made to similar language in Minnesota Statutes, sections 169.01, subdivision 75; and 171.01, subdivision 2, in Laws 2005, First Special Session chapter 6, article 3, sections 36 and 55, to conform the definition of "commercial motor vehicle" to federal regulations.

Sec. 11. **Explanation.**

This amendment corrects erroneous terminology.

Sec. 12. **Explanation.**

This amendment corrects an omitted reference in terminology.

Sec. 13. **Explanation.**

Laws 1997, chapter 239, article 10, sections 2 to 26, was a pilot program in the 4th judicial district involving domestic abuse perpetrated by a minor. Originally the program was intended for the period June 1, 1998, through July 31, 1999; Laws 1998, chapter 367, article 5, section 11, extended the program through July 31, 2000. There have been no further extensions of the pilot program. The definition of child in need of protection services (CHIPS) was amended to include this program in Minnesota Statutes, section 260C.007, subdivision 6, clause (16), (Laws 1997, chapter 239, article 11, section 1). The proposed amendment allows the revisor to remove an obsolete clause from the CHIPS definition in Minnesota Statutes, section 260C.007.

Sec. 14. **Explanation.**

This correction was requested by the Department of Revenue. The phrase "by owner" creates confusion and is not relevant to the purpose of the section.

Sec. 15. **Explanation.**

Laws 2005, chapter 136, article 11, section 18, paragraph (a), repealed Minnesota Statutes, sections 299A.64, 299A.65, and 299A.66, the law establishing a Criminal Gang Council and Strike Force. Laws 2005, chapter 136, article 11, section 4, codified as Minnesota Statutes, section 299A.641, established the Gang and Drug Oversight Council as its successor agency. The proposed amendment corrects an erroneous reference.

Sec. 16. **Explanation.**

Laws 2005, chapter 136, article 11, section 18, paragraph (a), repealed the law governing the Criminal Gang Council and Strike Force and replaced the law with Minnesota Statutes, section 299A.641, establishing a Gang and Drug Oversight Council. This amendment changes the reference requiring development of identifying characteristics of gang membership to Minnesota Statutes, section 299A.641, subdivision 3, clause (7).

Sec. 17. **Explanation.**

This section amends section 325E.61, subdivision 5, by defining a term through a reference to definitions in the section, in order to preserve the definition when the subdivision is recodified into chapter 13, data practices, as provided for in section 24.

Sec. 18. **Explanation.**

This section corrects a reference to the Minnesota Insurance Guaranty Association.

Sec. 19. **Explanation.**

This amendment corrects a typographical error.

Sec. 20. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 21. **Explanation.**

The rider language for the indicated programs was placed in the wrong subdivision in the bill. The summary by fund for each subdivision reflects the correct placement of the program appropriations.

Sec. 22. **Explanation.**

Minnesota Statutes, section 17.451, subdivision 2, defining farmed cervidae, was repealed in Laws 2005, First Special Session chapter 1, article 1, section 98, and replaced by Minnesota Statutes, section 35.153, subdivision 3.

Sec. 23. **Explanation.**

This revisor instruction will correct terminology to conform to changes made in Laws 2005, First Special Session chapter 6.

Sec. 24. **Explanation.**

This section recodifies section 325E.61, subdivision 5, from a chapter unrelated to its subject to a chapter that deals directly with its subject. The subdivision has been amended in section 17 to preserve the definition of a key term.

Sec. 25. **Explanation.**

This revisor instruction corrects erroneous references.

Sec. 26. **Explanation.**

Subdivision 1. Section 155A.03, subdivision 11, is a definition of the Minnesota Cosmetology Advisory Council repealed by Laws 2005, chapter 27, section 10.

Subd. 2. The Pipeline Advisory Committee established in 1998 and codified as Minnesota Statutes, section 299J.061, has expired in accordance with Minnesota Statutes, section 15.059, subdivision 5, and, according to the Department of Public Safety, the committee no longer exists.

Subd. 3. The term "department" is not used in Minnesota Statutes, sections 309.50 to 309.61, and neither the department nor the commissioner of commerce has any duties or responsibilities relating to social or charitable organizations since the enactment of Laws 1993, chapter 192, section 86.

Subd. 4. Section 326.991, subdivision 2, referred to a program in section 326.991, subdivision 1, which has expired. The subdivision is now meaningless.

Subd. 5. This section deletes prospective amendments to Minnesota Statutes, section 297A.64, subdivisions 3 and 4, that removed references to Minnesota Statutes, section 297A.64, subdivision 1, which was prospectively repealed. Because of an amendment by Laws 2005, First Special Session chapter 3, article 5, section 33, the prospective repeal of subdivision 1 never took effect. Therefore, the references to subdivision 1 should remain in effect.

Subd. 6. Minnesota Statutes 2004, section 299C.65, subdivision 2, was amended by Laws 2005, chapter 136, article 11, section 13, and Laws 2005, chapter 156, article 5, section 20. Laws 2005, chapter 136, the public safety omnibus bill, made several changes to the membership of the Criminal and Juvenile Justice Policy Group, including striking paragraph (b), clause (15), which designated the commissioner of administration or a designee as a member of the task force created to assist the policy group. Laws 2005, chapter 156, article 5, section 20, amended paragraph (b), clause (15), and changed the task force membership from the commissioner of administration to the state chief information officer, an addition for purposes of the newly created Office of Enterprise Technology, in Laws 2005, chapter 156, article 5. The Laws 2005, chapters 136 and 156 amendments to Minnesota Statutes 2004, section 299C.65, subdivision 2, paragraph (b), clause (15), striking and adding new language, created an editorial conflict. The Laws 2005, chapter 136, amendments were printed in the main text and the Laws 2005, chapter 156, amendment was printed as a note. This repealer allows the revisor to remove the note containing the amendatory language. The CriMNet program administrator plans to add the state chief information officer to the task force in a technical bill in the 2006 legislative session.

Subd. 7. Laws 2005, First Special Session chapter 4, article 5, section 14, amended Minnesota Statutes, section 256M.40, subdivision 2, relating to state children and community services grant allocation. That subdivision was also repealed in the same legislative session in Laws 2005, First Special Session chapter 4, article 3, section 20. The repeal was printed in the main text and the amendment, now obsolete, was printed as a note. This repealer allows the revisor to remove the note containing the amendatory language.

ARTICLE 2
DATA PRACTICES

Section 1. **Explanation.**

Sections 1 to 3 update statutory references in Minnesota Statutes, chapter 13, under Laws 1999, chapter 227, section 22, to newly enacted data practice laws codified outside chapter 13.

ARTICLE 3
CROSS-REFERENCES

Section 1. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 2. **Explanation.**

Minnesota Statutes, section 62D.043, was repealed by Laws 2004, chapter 285, article 3, section 11, making the reference in this section obsolete.

Sec. 3. **Explanation.**

Minnesota Statutes, section 62E.03, was repealed by Laws 2005, chapter 132, section 38, making the reference in this section obsolete.

Sec. 4. **Explanation.**

This amendment corrects an erroneous reference. Laws 2004, chapter 279, article 9, section 1, struck the old language in paragraph (e).

Sec. 5. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 6. **Explanation.**

This amendment corrects an obsolete reference. Section 103F.225 expired June 30, 2004.

Sec. 7. **Explanation.**

This amendment corrects an erroneous reference. Section 473.156 was repealed by Laws 2005, First Special Session chapter 1, article 2, section 162, and replaced with a new section 473.1565 dealing with the same subject.

Sec. 8. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 9. **Explanation.**

This amendment corrects an obsolete reference. Section 116J.573, setting out criteria for accounts and projects, was repealed in 2005.

Sec. 10. **Explanation.**

This amendment corrects an erroneous reference resulting from renumbering items in Laws 2005, chapter 23, section 1.

Sec. 11. **Explanation.**

Minnesota Rules, chapter 4666, was repealed by Laws 2000, chapter 361, section 24, making the reference in this section obsolete.

Sec. 12. **Explanation.**

This amendment corrects an erroneous reference. Section 144.601 does not exist.

Sec. 13. **Explanation.**

Minnesota Statutes, section 145A.13, expired January 1, 2004, according to Laws 2003, First Special Session chapter 14, article 8, section 27, making the reference in this section obsolete.

Sec. 14. **Explanation.**

This amendment corrects an erroneous reference. Law relating to the Board of Social Work is now found in Minnesota Statutes, chapter 148D.

Sec. 15. **Explanation.**

This amendment corrects an erroneous range reference.

Sec. 16. **Explanation.**

Minnesota Statutes, section 237.65, expired December 31, 2004, under Laws 1999, chapter 224, section 7, as amended by Laws 2004, chapter 261, article 6, section 3, making the reference in this section obsolete.

Sec. 17. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 18. **Explanation.**

This amendment corrects an erroneous reference to a repealed section.

Sec. 19. **Explanation.**

Minnesota Statutes, section 256.9731, was repealed by Laws 2002, chapter 220, article 16, section 3, making the reference in this section obsolete.

Sec. 20. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 21. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 22. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 23. **Explanation.**

Minnesota Statutes, section 274.04, was repealed by Laws 2003, chapter 127, article 5, section 50; and Minnesota Statutes, section 274.05, was repealed by Laws 2005, chapter 151, article 5, section 46, making the references to these sections obsolete.

Sec. 24. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 25. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 26. **Explanation.**

This amendment corrects an erroneous reference. Section 290.48, subdivisions 3 and 4, were repealed by Laws 2005, chapter 151, article 1, section 117, and recodified as section 270C.36 by Laws 2005, chapter 151, article 1, section 42.

Sec. 27. **Explanation.**

This amendment deletes obsolete references to repealed provisions.

Sec. 28. **Explanation.**

Minnesota Statutes, section 296A.25, relating to administrative appeals, was repealed in Laws 2005, chapter 151, article 1, section 117, and replaced by Minnesota Statutes, section 270C.35.

Sec. 29. **Explanation.**

This amendment corrects an erroneous reference to a repealed section.

Sec. 30. **Explanation.**

Minnesota Statutes, chapter 168C, relating to bicycle registration, was repealed in Laws 2005, First Special Session chapter 6, article 2, section 48. The reference to Minnesota Statutes, section 168C.11, is no longer valid.

Sec. 31. **Explanation.**

This amendment corrects an erroneous reference to a repealed section.

Sec. 32. **Explanation.**

This amendment corrects an erroneous reference to a repealed section.

Sec. 33. **Explanation.**

Minnesota Statutes, section 353.36, subdivision 2a, was repealed by Laws 2005, First Special Session chapter 8, article 10, section 81, making the reference in Minnesota Statutes, section 353.27, subdivision 9, obsolete.

Sec. 34. **Explanation.**

Minnesota Statutes, section 353.36, subdivision 2, was repealed by Laws 2005, First Special Session chapter 8, article 10, section 81, making the reference in Minnesota Statutes, section 353.33, subdivision 1, obsolete.

Sec. 35. **Explanation.**

Minnesota Statutes, section 353.36, subdivision 2, was repealed by Laws 2005, First Special Session chapter 8, article 10, section 81, making the reference in Minnesota Statutes, section 353.656, subdivision 8, obsolete.

Sec. 36. **Explanation.**

Minnesota Statutes, section 356.55, was repealed by Laws 2003, First Special Session chapter 12, article 6, section 1, making the reference in Minnesota Statutes, section 354.05, subdivision 13, obsolete.

Sec. 37. **Explanation.**

This amendment corrects an erroneous reference. Minnesota Statutes, chapter 260A, providing truancy programs and procedures, was enacted in Laws 1995, chapter 226, article 3. The Juvenile Court Act, Minnesota Statutes, chapter 260, was recodified into Minnesota Statutes, chapters 260, 260B, and 260C, by Laws 1999, chapter 139.

The reference in Minnesota Statutes 2005 Supplement, section 357.021, subdivision 1a, paragraph (c), clause (5), should be to all of these chapters.

Sec. 38. **Explanation.**

This amendment removes an obsolete reference. Minnesota Statutes, section 580.16, was repealed by Laws 2005, chapter 4, section 153.

Sec. 39. **Explanation.**

Minnesota Statutes, section 144A.48, was repealed by Laws 2002, chapter 252, section 25, making the reference in this section obsolete.

Sec. 40. **Explanation.**

Minnesota Rules, part 7045.0304, was repealed at State Register, volume 16, page 2102, making the reference in this section obsolete.

Sec. 41. **Explanation.**

The proposed amendment corrects an erroneous reference. Laws 2003, chapter 12, article 2, section 8, repealed the old guardianship and conservatorship law, and Laws 2003, chapter 12, article 1, sections 1 to 73, enacted the Uniform Guardianship and Protective Proceedings Act, sections 524.5-101 to 524.5-502. Section 524.5-313 governing powers and duties of guardians is the appropriate new reference.

Sec. 42. **Explanation.**

This amendment corrects an erroneous reference.

Sec. 43. **Explanation.**

This amendment corrects an erroneous reference.

155A.03 DEFINITIONS.

Subd. 11. **Council.** The "council" is the Minnesota Cosmetology Advisory Council, as defined in section 155A.06.

299J.061 PIPELINE ADVISORY COMMITTEE AUTHORIZED.

Subdivision 1. **Authority.** The commissioner may appoint a Pipeline Advisory Committee to advise the commissioner, director, Environmental Quality Board, and other appropriate federal, state, and local government agencies and officials on matters relating to pipeline safety, routing, construction, and operation. If requested by the commissioner, the committee shall review and comment on proposed rules and the operation of the Office of Pipeline Safety.

Subd. 2. **Membership.** At minimum, the committee must consist of representatives of the hazardous liquid pipeline industry, the gas distribution industry, the gas pipeline industry, the pipeline design and construction industry, state or local government, and the general public.

Subd. 3. **Terms; compensation; removal.** The terms, compensation, and removal of committee members are governed by section 15.059.

309.50 SOLICITATION OF CHARITABLE FUNDS; DEFINITIONS.

Subd. 8. **Department.** "Department" means the Department of Commerce.

326.991 EXCEPTION.

Subd. 2. **Local administration.** The commissioner may contract with the city of Minneapolis to administer this licensing program.

Senator ..... moves to amend S.F. No. 3128 as follows:

Page 17, lines 22 and 31, delete "contained in" and insert "governed by"

Page 17, delete section 2 and insert:

"Sec. 2. Minnesota Statutes 2004, section 13.322, is amended by adding a subdivision to read:

Subd. 5. **Use of Social Security numbers.** Certain restrictions on the use of Social Security numbers are governed by section 325E.59."

Amend the title accordingly

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State of Minnesota

S.F. No. 3128 - Revisor's Bill

Author: Senator Don Betzold

Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394) K.P.

Date: March 22, 2006

This bill contains recommendations from the Revisor of Statutes for technical and clarifying amendments to current law.

Article 1 contains general provisions.

Article 2 contains Data Practices Act corrections.

Article 3 corrects cross-references.

Note that the memorandum of explanation attached to the bill contains a more detailed summary of its provisions.

KP:cs

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

S.F. No. 3246: A bill for an act relating to transportation; commuter rail; authorizing the commissioner to contract for use of railroad right-of-way; regulating civil liability; amending Minnesota Statutes 2004, section 174.82.

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

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 174.82, is amended to read:

174.82 COMMISSIONER'S DUTIES.

The planning, development, construction, operation, and maintenance of commuter rail track, facilities, and services are essential governmental functions, serve a public purpose, and are a matter of public necessity. The commissioner shall be responsible for all aspects of planning, developing, constructing, operating, and maintaining commuter rail, including system planning, advanced corridor planning, preliminary engineering, final design, construction, negotiating with railroads, and developing financial and operating plans. The commissioner may enter into a memorandum of understanding or agreement with a public or private entity, including a regional railroad authority, a joint powers board, and a railroad, to carry out these activities. The commissioner, or public entity contracting with the commissioner, may contract with a railroad that is a Class I railroad under federal law for the joint or shared use of the railroad's right-of-way or the construction, operation, or maintenance of rail track, facilities, or services for commuter rail purposes. Notwithstanding section 3.732, subdivision 1, clause (2), or section 466.01, subdivision 6, the Class I railroad and its employees acting under a commuter rail contract are immune from punitive damages in the same manner as the state or a municipality under section 3.736, subdivision 3, and section 466.04, subdivision 1, paragraph (b), and are entitled to indemnification as provided in section 3.736, subdivision 9, and section 466.07. Notwithstanding any law to the contrary, a contract with the Class I railroad for any commuter rail service, or joint or shared use of the railroad's right-of-way, may also provide for the allocation of financial responsibility and the procurement of insurance for the parties for all types of claims or damages. A contract entered into under this section does not affect rights of employees under the Federal Employers Liability Act."

Amend the title accordingly

And when so amended the bill be re-referred to the Committee on Transportation without recommendation. Amendments adopted. Report adopted.

.....
(Committee Chair)

March 23, 2006 .....
(Date of Committee recommendation)

Senator Betzold introduced–

S.F. No. 3246: Referred to the Committee on Judiciary.

A bill for an act

relating to transportation; commuter rail; authorizing the commissioner to contract for use of railroad right-of-way; regulating civil liability; amending Minnesota Statutes 2004, section 174.82.

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

Section 1. Minnesota Statutes 2004, section 174.82, is amended to read:

174.82 COMMISSIONER'S DUTIES.

The planning, development, construction, operation, and maintenance of commuter rail track, facilities, and services are essential governmental functions, serve a public purpose, and are a matter of public necessity. The commissioner shall be responsible for all aspects of planning, developing, constructing, operating, and maintaining commuter rail, including system planning, advanced corridor planning, preliminary engineering, final design, construction, negotiating with railroads, and developing financial and operating plans. The commissioner may enter into a memorandum of understanding or agreement with a public or private entity, including a regional railroad authority, a joint powers board, and a railroad, to carry out these activities. The commissioner, or public entity contracting with the commissioner, may contract with a railroad for the joint or shared use of the railroad's right-of-way or the construction, operation, or maintenance of rail track, facilities, or services for commuter rail purposes. A railroad and its employees permitting the joint or shared use of the railroad's right-of-way or providing commuter rail construction, operation, or maintenance services under a contract with the commissioner or a public entity must be afforded the immunities and liabilities of a public entity and its employees, including the immunities provided under chapter 466. Notwithstanding any other law to the contrary, a contract with the railroad for any commuter rail service, or

joint or shared use of the railroad's right-of-way, may also provide for the allocation of financial responsibility and the procurement of insurance for the parties for all types of claims or damages.

Senator ..... moves to amend S.F. No. 3246 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 174.82, is amended to read:

174.82 COMMISSIONER'S DUTIES.

The planning, development, construction, operation, and maintenance of commuter rail track, facilities, and services are essential governmental functions, serve a public purpose, and are a matter of public necessity. The commissioner shall be responsible for all aspects of planning, developing, constructing, operating, and maintaining commuter rail, including system planning, advanced corridor planning, preliminary engineering, final design, construction, negotiating with railroads, and developing financial and operating plans. The commissioner may enter into a memorandum of understanding or agreement with a public or private entity, including a regional railroad authority, a joint powers board, and a railroad, to carry out these activities. The commissioner, or public entity contracting with the commissioner, may contract with a railroad that is a Class I railroad under federal law for the joint or shared use of the railroad's right-of-way or the construction, operation, or maintenance of rail track, facilities, or services for commuter rail purposes. Notwithstanding section 3.732, subdivision 1, clause (2), or section 466.01, subdivision 6, the Class I railroad and its employees acting under a commuter rail contract are immune from punitive damages in the same manner as the state or a municipality under section 3.736, subdivision 3, and section 466.04, subdivision 1, paragraph (b). Notwithstanding any law to the contrary, a contract with the Class I railroad for any commuter rail service, or joint or shared use of the railroad's right-of-way, may also provide for the allocation of financial responsibility and the procurement of insurance for the parties for all types of claims or damages. A contract entered into under this section does not affect rights of employees under the Federal Employers Liability Act."

and are entitled to indemnification as provided in section 3.736, subdivision 9, and section 466.07