

M/C

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Minnesota Statutes  
Chapters 300 – 364

300\*#06S

1 300.06 FILING AND RECORD OF CERTIFICATE.

2 The certificate of a corporation must be filed for record  
3 with the secretary of state. If the secretary of state finds  
4 that it conforms to law and that the required fee has been paid,  
5 ~~he or she~~ the secretary of state must record it and certify that \*  
6 fact on it. If the corporation is a financial corporation or an  
7 insurance company, the secretary of state may not accept a  
8 certificate for filing unless the certificate also contains the  
9 endorsement of the commissioner of commerce.

300\*#083S

10 300.083 INDEMNIFICATION.

11 No change for subd 1

12 Subd. 2. INDEMNIFICATION MANDATORY; STANDARD. (a)

13 Subject to the provisions of subdivision 4, a corporation shall  
14 indemnify a person made or threatened to be made a party to a  
15 proceeding by reason of the former or present official capacity  
16 of the person against judgments, penalties, fines, including,  
17 without limitation, excise taxes assessed against the person  
18 with respect to an employee benefit plan, settlements, and  
19 reasonable expenses, including attorneys' fees and  
20 disbursements, incurred by the person in connection with the  
21 proceeding, if, with respect to the acts or omissions of the  
22 person complained of in the proceeding, the person:

23 (1) Has not been indemnified by another organization or  
24 employee benefit plan for the same judgments, penalties, fines,  
25 including, without limitation, excise taxes assessed against the  
26 person with respect to an employee benefit plan, settlements,  
27 and reasonable expenses, including attorneys' fees and  
28 disbursements incurred by the person in connection with the  
29 proceeding with respect to the same acts or omissions;

30 (2) Acted in good faith;

31 (3) Received no improper personal benefit;

32 (4) In the case of a criminal proceeding, had no reasonable  
33 cause to believe ~~his~~ the conduct was unlawful; and \*

34 (5) In the case of acts or omissions occurring in the  
35 official capacity described in subdivision 1, paragraph (c),  
36 clause (1) or (2), reasonably believed that the conduct was in  
37 the best interests of the corporation, or in the case of acts or  
38 omissions occurring in ~~his~~ the person's official capacity \*  
39 described in subdivision 1, paragraph (c), clause (3),  
40 reasonably believed that the conduct was not opposed to the best  
41 interests of the corporation. If the person's acts or omissions  
42 complained of in the proceeding relate to conduct as a director,  
43 officer, trustee, employee, or agent of an employee benefit  
44 plan, the conduct is not considered to be opposed to the best  
45 interests of the corporation if the person reasonably believed  
46 that the conduct was in the best interests of the participants  
47 or beneficiaries of the employee benefit plan.

48 (b) The termination of a proceeding by judgment, order,  
49 settlement, conviction, or upon a plea of nolo contendere or its  
50 equivalent does not, of itself, establish that the person did  
51 not meet the criteria set forth in this subdivision.

52 No change for subd 3 to 9

300\*#14S

53 300.14 CERTAIN CORPORATIONS.

54 No change for subd 1

55 Subd. 2. AGREEMENT. The agreement must be submitted

56 to the stockholders of record of each corporation at a meeting  
57 called separately for the purpose of considering it. Notice of  
58 the time, place, and object of the meeting must be mailed at  
59 least two weeks before the meeting to each stockholder of  
60 record, whether entitled to vote or not, at ~~his or her~~ the \*  
61 stockholder's last known address, as shown by the corporation's \*  
62 records.

63 At the meeting the agreement must be considered and a vote  
64 by ballot, in person or by proxy, taken for the adoption or  
65 rejection of it. If votes to adopt the agreement are cast by  
66 stockholders of each corporation holding stock in the  
67 corporation entitling them to exercise at least nine-tenths of  
68 the voting power on a proposal to consolidate the corporation  
69 with another, or by any other proportion of the stockholders as  
70 prescribed by the certificate of incorporation for votes on the  
71 proposal, then that fact must be certified on the agreement by  
72 the secretary or assistant secretary of each corporation, under

1 its seal.

2 The agreement adopted and certified must be signed by the  
3 president or vice-president and secretary or assistant secretary  
4 of each corporation under its corporate seal and acknowledged by  
5 the president or vice-president to be the respective acts,  
6 deeds, and agreements of the corporation. The certified and  
7 acknowledged agreement must be filed for record with the  
8 secretary of state and be taken and considered to be the  
9 agreement and acts of consolidation of the constituent  
10 corporations, and the certificate of incorporation of the  
11 consolidated corporation. A certified copy of it is evidence of  
12 the performance of all antecedent acts and conditions necessary  
13 to the consolidation and of the existence of the consolidated  
14 corporation.

300\*#16S

15 300.16 RIGHTS OF STOCKHOLDERS.

16 No change for subd 1 to 2

17 Subd. 3. EFFECT. Unless the consolidation is  
18 abandoned, the stockholder, on the making of the demand in  
19 writing, ceases to be a stockholder in the constituent  
20 corporation and has no rights with respect to the stock, except  
21 the right to receive payment for it. Upon payment of the agreed  
22 fair cash value of the stock or the value of the stock under  
23 final judgment, the stockholder must transfer ~~his-or-her~~ the  
24 stock to the consolidated corporation. If the consolidated  
25 corporation fails to pay the amount of the judgment within ten  
26 days after it becomes final, the judgment may be collected and  
27 enforced in the manner prescribed by law.

28 No change for subd 4

300\*#23S

29 300.23 VOTING, HOW REGULATED.

30 Unless otherwise provided in the certificate or bylaws, at  
31 every meeting each stockholder or member is entitled to one vote  
32 in person, or by proxy made within one year or other time  
33 specially limited by law, for each share or other lawful unit of  
34 representation held in ~~his-or-her~~ an individual, corporate, or  
35 representative capacity. No stock may be voted on at an  
36 election within 20 days after its transfer on the books of the  
37 corporation.

300\*#24S

38 300.24 CUMULATIVE VOTING.

39 The certificate of incorporation, or an amendment to it, of  
40 a corporation may provide that, at all elections of directors or  
41 managers, each stockholder or member is entitled to as many  
42 votes as equals the number of ~~his-or-her~~ shares of stock owned  
43 multiplied by the number of directors or managers to be elected,  
44 and that the stockholder or members may cast all of these votes  
45 for a single director or manager, or may distribute them among  
46 the number to be voted for, or for any two or more of them, ~~as~~  
47 ~~he-or-she-sees-fit~~. This right when exercised is termed  
48 "cumulative voting."

300\*#27S

49 300.27 STOCKHOLDERS, LIABILITIES.

50 Subdivision 1. PERSONAL LIABILITY. A stockholder is  
51 personally liable for corporate debts in the following cases:

52 (1) for all unpaid instalments on stock owned by ~~him-or-her~~  
53 the stockholder or transferred for the purpose of defrauding  
54 creditors;

55 (2) for failure by the corporation to comply substantially  
56 with the provisions as to organization and publicity; and

57 (3) for personally violating the provisions in the  
58 transaction of any corporate business as officer, director, or  
59 member and for fraudulent or dishonest conduct in the discharge  
60 of any official duty.

61 No change for subd 2 to 3

300\*#52S

62 300.52 MEETINGS.

63 No change for subd 1

64 Subd. 2. CALL BY MEMBERS. When by reason of the  
65 death, absence, or other legal disability of the officers of a  
66 corporation there is no person authorized to call or preside at  
67 a legal meeting of the corporation, three or more of its  
68 stockholders or members may call a meeting by giving to all the  
69 others the notice prescribed in subdivision 1. The notice must  
70 designate some person to preside at the meeting until a ~~chairman~~  
71 chair and clerk are chosen, and who will act during the absence

1 of those authorized to act in one or both of those capacities.  
 2 Any business may be done at the meeting which could be lawfully  
 3 transacted at a regular meeting.

300\*#55S

4 300.55 STOCK CERTIFICATES, TO WHOM ISSUED.

5 When a person pays in full all amounts due a corporation  
 6 upon a certificate of its stock, and surrenders all receipts, if  
 7 any, issued for it, ~~he-or-she~~ that person must be furnished with \*  
 8 a certificate, under the corporate seal, stating the number of  
 9 shares and class of its stock owned by that person, signed by  
 10 its president or vice-president, and by its secretary, or by the  
 11 officers the certificate of incorporation or bylaws provides.  
 12 When a certificate is signed by a transfer agent or registrar,  
 13 the signature of a corporate officer and the corporate seal upon  
 14 the certificate may be engraved or printed facsimiles. The  
 15 certificate is prima facie evidence of ownership of the stock.

300\*#57S

16 300.57 PERSONAL REPRESENTATIVES, GUARDIANS, TRUSTEES MAY  
 17 VOTE.

18 ~~A-personal-representative,-guardian,-or-trustee~~ Personal \*  
 19 representatives, guardians, or trustees must represent the \*  
 20 shares of stock in ~~his-or-her~~ their hands, for all purposes, at \*  
 21 all meetings of the corporation. While acting in good  
 22 faith, ~~this-person-is~~ these persons are not personally liable, \*  
 23 but the states and funds in ~~his-or-her~~ their hands are liable in \*  
 24 the same way and to the same extent as the beneficiary or other  
 25 represented party or interest would be if competent to act and  
 26 holding the stock in their own names, respectively.

300\*#64S

27 300.64 LIABILITY OF STOCKHOLDERS AND DIRECTORS.

28 Subdivision 1. WITHDRAWAL OF CAPITAL AND REFUND TO  
 29 STOCKHOLDERS. If the capital stock of a manufacturing  
 30 corporation is withdrawn and refunded to the stockholders before  
 31 the payment of corporate debts for which it would have been  
 32 liable, the stockholders are liable to a creditor, to the amount  
 33 of the sum refunded to each of them, respectively. If, in an  
 34 action under this statute, a stockholder is compelled to pay a  
 35 debt, ~~he-or-she~~ the stockholder may call upon every stockholder \*  
 36 to whom any part of the stock has been refunded to  
 37 contribute ~~his-or-her~~ a proportionate share of the sum so paid \*  
 38 by the stockholder.

39 No change for subd 2

40 Subd. 3. LIABILITY OF OFFICERS AND DIRECTORS FOR  
 41 CORPORATE DEBT. Every officer who intentionally neglects or  
 42 refuses to perform a duty imposed ~~upon-him-or-her~~ by law is \*  
 43 liable for all corporate debts contracted during the period of  
 44 the neglect. If the corporation violates a provision of law  
 45 whereby it becomes insolvent, the directors ordering or  
 46 assenting to the violation are liable in an action under the  
 47 statute for all debts contracted after the violation.

301\*#73S

48 301.73 CERTIFICATE.

49 The certificate of the corporation shall be filed for  
 50 record with the secretary of state. ~~If-he-finds~~ Upon finding \*  
 51 that the certificate conforms to law, has endorsed thereon the  
 52 approval of the commissioner of commerce, and that the required  
 53 fee has been paid, the secretary of state shall record the same  
 54 and certify that fact thereon. After such recordation the  
 55 certificate shall be filed for record with the county recorder  
 56 of the county of the principal place of business, as specified  
 57 in the certificate.

301\*#82S

58 301.82 SUPERVISION AND EXAMINATION.

59 The corporation is subject to the supervision of and  
 60 examination by the commissioner of commerce in the manner  
 61 provided by section 46.04. The corporation shall pay the actual  
 62 expenses of the examination as fixed by the commissioner. The  
 63 corporation shall make such reports of its condition to the  
 64 commissioner as ~~he~~ may prescribe ~~be prescribed by the~~ \*  
 65 commissioner. \*

301A#01S

66 301A.01 REGIONAL TOURISM DEVELOPMENT CREDIT CORPORATIONS.

67 Subdivision 1. For the purposes of sections 301A.01 to  
 68 301A.14, the commissioner of energy and economic development of  
 69 the state shall divide the state into six tourist regions and  
 70 shall keep on file in ~~his~~ the commissioner's office and in the \*

1 office of the secretary of state the legal descriptions and a  
2 map of the regions.

3 No change for subd 2 to 4

301A#03S

4 301A.03 CERTIFICATE.

5 The certificate of the corporation shall be filed for  
6 record with the secretary of state. If ~~he~~ the secretary of  
7 state finds that the certificate conforms to law, has endorsed  
8 thereon the approval of the commissioner of commerce, and that  
9 the required fee has been paid, the secretary of state shall  
10 record the same and certify that fact thereon. After such  
11 recordation the certificate shall be filed for record with the  
12 county recorder of the county of the principal place of  
13 business, as specified in the certificate.

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301A#07S

14 301A.07 DIRECTORS.

15 Subdivision 1. All the corporate powers of the corporation  
16 shall be exercised by a board of not less than nine elected  
17 directors who shall be residents of Minnesota. One-third of the  
18 directors shall be elected from persons who are actively engaged  
19 in the vacation travel industry in the region of incorporation.  
20 The remaining number of directors shall be elected from persons  
21 representative of and involved in any of the lending  
22 institutions which are nonstockholder members of the  
23 corporation. The commissioner of energy and economic  
24 development or ~~his~~ the commissioner's designated representative  
25 and the director or ~~chairman~~ chair of the regional development  
26 or planning agency as designated in the bylaws, or ~~his~~ the  
27 director's or chair's designated representative, shall be ex  
28 officio directors, with all the authority but without the  
29 liability as directors, except for gross negligence or willful  
30 misconduct. The number of directors and their terms of office  
31 shall be determined by the bylaws. If a vacancy occurs in the  
32 board of directors through death, resignation, or otherwise, the  
33 remaining directors may elect a person to fill the vacancy until  
34 the next annual meeting of the corporation.

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35 No change for subd 2 to 3

301A#12S

36 301A.12 SUPERVISION AND EXAMINATION.

37 The corporation is subject to the supervision of and  
38 examination by the commissioner of commerce in the manner  
39 provided by section 46.04. The corporation shall pay the actual  
40 expenses of the examination as fixed by the commissioner. The  
41 corporation shall make such reports of its condition to the  
42 commissioner as ~~he~~ may prescribe be prescribed by the  
43 commissioner.

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303\*#08S

44 303.08 ISSUANCE OF CERTIFICATE OF AUTHORITY.

45 Subdivision 1. BY SECRETARY OF STATE. If the  
46 application be according to law, the secretary of state, when  
47 all fees and charges have been paid as required by law, shall  
48 file ~~in-his-office~~ the application and the copy of the articles  
49 of incorporation, and shall issue and record a certificate of  
50 authority to transact business in this state.

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51 No change for subd 2

303\*#13S

52 303.13 SERVICE OF PROCESS.

53 Subdivision 1. FOREIGN CORPORATION. A foreign  
54 corporation shall be subject to service of process, as follows:

55 (1) By service on its registered agent;  
56 (2) When any foreign corporation authorized to transact  
57 business in this state fails to appoint or maintain in this  
58 state a registered agent upon whom service of process may be  
59 had, or whenever any registered agent cannot be found at its  
60 registered office in this state, as shown by the return of the  
61 sheriff of the county in which the registered office is  
62 situated, or by an affidavit of attempted service by any person  
63 not a party, or whenever any corporation withdraws from the  
64 state, or whenever the certificate of authority of any foreign  
65 corporation is revoked, or canceled, service may be made by  
66 delivering to and leaving with the secretary of state, or with  
67 any deputy or clerk in the corporation department of ~~his~~ the  
68 secretary of state's office, three copies thereof and a fee of  
69 \$15; provided, that after a foreign corporation withdraws from  
70 the state, pursuant to section 303.16, service upon the  
71 corporation may be made pursuant to the provisions of this

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\*

1 section only when based upon a liability or obligation of the  
2 corporation incurred within this state or arising out of any  
3 business done in this state by the corporation prior to the  
4 issuance of a certificate of withdrawal.

5 (3) If a foreign corporation makes a contract with a  
6 resident of Minnesota to be performed in whole or in part by  
7 either party in Minnesota, or if a foreign corporation commits a  
8 tort in whole or in part in Minnesota against a resident of  
9 Minnesota, such acts shall be deemed to be doing business in  
10 Minnesota by the foreign corporation and shall be deemed  
11 equivalent to the appointment by the foreign corporation of the  
12 secretary of the state of Minnesota and ~~his~~ successors to be its  
13 true and lawful attorney upon whom may be served all lawful  
14 process in any actions or proceedings against the foreign  
15 corporation arising from or growing out of the contract or  
16 tort. Process shall be served in duplicate upon the secretary  
17 of state, together with a fee of \$15 and the secretary of state  
18 shall mail one copy thereof to the corporation at its last known  
19 address, and the corporation shall have 30 days within which to  
20 answer from the date of the mailing, notwithstanding any other  
21 provision of the law. The making of the contract or the  
22 committing of the tort shall be deemed to be the agreement of  
23 the foreign corporation that any process against it which is so  
24 served upon the secretary of state shall be of the same legal  
25 force and effect as if served personally on it within the state  
26 of Minnesota.

27 Subd. 2. DUTIES OF SECRETARY OF STATE. In case of  
28 service of process ~~upon the secretary of state, he~~ the secretary  
29 of state shall immediately cause one copy of such process to be  
30 forwarded by certified mail addressed to the corporation so  
31 served, at its principal office in the state or country under  
32 the laws of which it is organized, and one copy thereof to the  
33 agent of such corporation, at its registered office in this  
34 state, as such addresses appear in the records of the secretary  
35 of state; provided that, if the corporation shall have withdrawn  
36 from the state in the manner provided by this chapter, one copy  
37 shall be sent to the address designated for such purpose in the  
38 application for withdrawal, instead of the registered office in  
39 this state.

40 No change for subd 3 to 4

41 Subd. 5. RECORD. The secretary of state shall keep  
42 a record of all processes served ~~upon him~~ under this section and  
43 shall record therein the time of such service and ~~his~~ the action  
44 with reference thereto.

303\*#14S

45 303.14 ANNUAL REPORT.

46 No change for subd 1 to 3

47 Subd. 4. CONFORMANCE. ~~If the secretary of state~~  
48 ~~finds~~ On finding that such annual report conforms to the  
49 requirements of this chapter, ~~he~~ the secretary of state shall  
50 file the same. ~~If he finds~~ On finding that it does not so  
51 conform, ~~he~~ the secretary of state shall return the same by mail  
52 to the corporation, in which event the provisions of section  
53 303.17, relating to failure to file such report within the  
54 period herein required, shall not apply if such report is made  
55 to conform to the requirements of this chapter and is filed with  
56 the secretary of state within 30 days from such return of the  
57 report by the secretary of state to the corporation.

58 No change for subd 5

303\*#16S

59 303.16 WITHDRAWAL FROM STATE.

60 No change for subd 1

61 Subd. 2. CONTENTS OF APPLICATION. The application  
62 for withdrawal shall set forth:  
63 (1) the name of the corporation and the state or country  
64 under the laws of which it is organized;  
65 (2) that it has no property located in this state and has  
66 ceased to transact business therein;  
67 (3) that its board of directors has duly determined to  
68 surrender its authority to transact business in this state;  
69 (4) that it revokes the authority of its registered agent  
70 in this state to accept service of process;  
71 (5) the address to which the secretary of state shall mail  
72 a copy of any process against the corporation that may be served  
73 upon ~~him~~ the secretary of state;  
74 (6) that it will pay to the state treasurer the amount of

1 any additional license fees properly found by the secretary of  
2 state to be then due from such corporation; and

3 (7) additional information required or demanded ~~by the~~ \*  
4 ~~secretary-of-state~~ to enable ~~him~~ the secretary of state to \*  
5 determine the additional license fees, if any, payable by the  
6 corporation, the determination thereof to be made in the manner  
7 provided by section 303.07, subdivision 2.

8 No change for subd 3

9 Subd. 4. APPROVAL; FILING. The application for  
10 withdrawal shall be delivered to the secretary of state. Upon  
11 ~~receipt thereof he shall examine~~ receiving and examining the \*  
12 same, and ~~if he finds~~ upon finding that it conforms to the \*  
13 provisions of this chapter, ~~he~~ the secretary of state shall, \*  
14 when all license fees, filing fees, and other charges have been  
15 paid as required by law, file the same ~~in his office~~ and shall \*  
16 issue and record a certificate of withdrawal. Upon the issuance  
17 of the certificate, the authority of the corporation to transact  
18 business in this state shall cease.

303\*#17S

19 303.17 LICENSE REVOCATION.

20 No change for subd 1

21 Subd. 2. NOTICE TO CORPORATION. ~~When the secretary~~ \*  
22 ~~of state shall find~~ On finding that any such default has \*  
23 occurred, ~~he~~ the secretary of state shall give notice by \*  
24 certified mail to such corporation, at its registered office in  
25 this state, that such default exists and that its certificate of  
26 authority will be revoked unless such default shall be cured  
27 within 30 days after the mailing of such notice.

28 No change for subd 3 to 5

303\*#18S

29 303.18 CANCELTION OF CERTIFICATE OF AUTHORITY.

30 No change for subd 1 to 2

31 Subd. 3. JUDGMENT OF CANCELTION. The attorney  
32 general shall cause two certified copies of the judgment  
33 canceling a certificate of authority to be delivered to the  
34 secretary of state. The secretary of state shall file one copy  
35 ~~in his office~~, and shall transmit the other copy to the \*  
36 registered office of the corporation in this state.

303\*#23S

37 303.23 CERTIFICATE ISSUED BY SECRETARY OF STATE.

38 Subdivision 1. PRIMA FACIE EVIDENCE; RECORDING. ~~Any~~ \*  
39 ~~certificate issued by the secretary of state pursuant to the~~ \*  
40 ~~provisions of this chapter, and~~ Copies of the certificates \*  
41 ~~certified by him, and any certificate issued pursuant to the~~ \*  
42 provisions of this chapter, by the secretary of state shall be \*  
43 prima facie evidence of the matters stated therein.

44 No change for subd 2

303\*#25S

45 303.25 FOREIGN TRUST ASSOCIATIONS, POWERS.

46 Subdivision 1. APPOINTMENTS. Any foreign trust  
47 association may accept appointment and act as executor of the  
48 will or administrator of the estate of any decedent who was a  
49 resident of this state at the time of ~~his~~ death, as trustee of \*  
50 any trust created by a resident of this state by will or  
51 otherwise, and as guardian or conservator of the person or  
52 estate, or both, of any resident of this state if banking or  
53 trust associations or corporations organized under the laws of  
54 this state or national banking associations maintaining their  
55 principal offices in this state are permitted to act as  
56 executors, administrators, trustees, guardians, or conservators  
57 in the state in which the foreign trust association maintains  
58 its principal office. Any foreign trust association may accept  
59 appointment and act as executor of the will or administrator of  
60 the estate of a decedent, who was a resident of the state in  
61 which the foreign trust association maintains its principal  
62 office at the time of ~~his~~ death, in ancillary probate \*  
63 proceedings in this state, as trustee of any trust created by  
64 the decedent by will or otherwise of property situated in this  
65 state, and as guardian or conservator in ancillary proceedings  
66 in this state with respect to the property of a resident of the  
67 other state if banking or trust associations or corporations  
68 organized under the laws of this state and national banking  
69 associations maintaining their principal offices in this state  
70 are permitted to act as executors, administrators, trustees,  
71 guardians, or conservators in the state in which the foreign  
72 trust association maintains its principal office.

1 Subd. 2. DESIGNATION OF ATTORNEY FOR SERVICE OF  
2 PROCESS. Before accepting appointment or acting as executor,  
3 administrator, trustee, guardian, or conservator, a foreign  
4 trust association shall appoint the secretary of state, ~~his~~ a  
5 successor or successors in office, its true and lawful attorney  
6 upon whom may be served all legal process in any action or  
7 proceeding against it, or in which it may be a party, in  
8 relation to or involving any acts or defaults by it as executor,  
9 administrator, trustee, guardian, or conservator. This  
10 appointment is irrevocable. Service upon the attorney is as  
11 valid and binding as if due personal service had been made upon  
12 the foreign trust association.

13 No change for subd 3 to 5

14 Subd. 6. SERVICE OF PROCESS. Service of process  
15 under this section may be made by delivering a copy to the  
16 secretary of state personally or by filing the same in ~~his~~ the  
17 secretary of state's office, accompanied by one additional copy  
18 for each person so served, and by the mailing by the secretary  
19 of state of a copy by certified mail, not later than the  
20 business day following the day of the service, to each person so  
21 served at the address of each person as shown by the records in  
22 the office of the secretary of state.

306\*#023S

23 306.023 UNUSED PUBLIC CEMETERY; TRANSFER TO OPERATING  
24 PUBLIC CEMETERY.

25 No change for subd 1

26 Subd. 2. To accomplish such transfer, the board of  
27 trustees of such cemetery association shall adopt a resolution  
28 to that effect by an unanimous vote of the board of trustees,  
29 and thereupon the ~~chairman~~ chair or president of the board of  
30 trustees and the secretary shall be authorized to execute the  
31 proper instruments and a deed in the name of the association to  
32 evidence the transfer; provided, however, that such transfer  
33 must first have been authorized by a majority vote of all  
34 members of the association, present and voting, at any regular  
35 meeting or at any special meeting called for that purpose,  
36 written notice of which meeting shall have been given to the  
37 members specifying the time, place and purpose of such meeting.

38 In the event said association shall be an unincorporated  
39 association, a deed executed in the name of such association by  
40 the ~~chairman~~ chair or president and the secretary or treasurer  
41 of the board of trustees shall be deemed a valid conveyance of  
42 the lands of the association.

43 No change for subd 3 to 4

306\*#025S

44 306.025 TRANSFER OF CEMETERIES TO STATUTORY CITIES.

45 No change for subd 1

46 Subd. 2. TRANSFER, HOW MADE. To accomplish such  
47 transfer, the board of trustees of such cemetery association  
48 shall first adopt a resolution to that effect by a unanimous  
49 vote of the members of the board of trustees, and thereupon the  
50 ~~chairman~~ chair or president of the board of trustees and the  
51 secretary shall be authorized to execute the proper instruments  
52 to evidence the transfer thereby and herein authorized,  
53 provided, however, that such transfer must first have been  
54 authorized by a majority vote of all the members of the  
55 association at any regular meeting or at any special meeting  
56 called for that express purpose.

57 No change for subd 3 to 7

306\*#03S

58 306.03 ACTUARY; RECORDS; REPORTS.

59 Every such corporation, in addition to its ordinary  
60 corporate officers, shall annually appoint an actuary, or  
61 provide by its bylaws that its secretary shall perform the  
62 duties of such office. The actuary shall keep a register of  
63 burials, ~~in-which-he-shall-enter~~ entering the date of burial or  
64 cremation, the name, age, sex, nativity, and cause of death of  
65 every person interred or cremated in such cemetery, so far as  
66 such facts can be ascertained from the friends, attending  
67 physician, or undertaker in charge, and in case of a pauper,  
68 stranger, or criminal, 'from the public official directing the  
69 burial. Such record shall be open to public inspection, and the  
70 actuary shall furnish to the state commissioner of health and to  
71 local health officers, when so requested, an accurate summary of  
72 such record during any specified year.

306\*#111S



1 306.111 VACANCIES AMONG ASSOCIATES, PROCEDURE FOR  
2 FILLING.

3 No change for subd 1 to 2

4 Subd. 3. At the time and place mentioned in the notice the  
5 meeting so called shall be held. Any owner of one or more lots  
6 in the cemetery may be present in person or by proxy and shall  
7 be entitled to one vote at that and all subsequent meetings of  
8 the lot owners. The meeting may be called to order by any lot  
9 owner and shall be organized by choosing in the usual manner a  
10 chairman chair and a secretary. The meeting shall thereupon \*  
11 proceed to fill the vacancies among the associates. The voting  
12 at such meeting shall be by viva voce, unless otherwise ordered  
13 by those present at the meeting. A majority of the lot owners  
14 voting at the meeting shall elect.

15 Subd. 4. The chairman chair and the secretary of the \*  
16 meeting shall, within five days after the meeting is held,  
17 prepare a certificate, which shall set forth the existence of  
18 the facts mentioned in subdivision 1. It shall further state  
19 that the meeting was held, giving the names of the chairman \*  
20 chair and the secretary and the names of the lot owners present \*  
21 and voting; but, if more than ten are so present and voting, the  
22 names of ten thereof shall be sufficient, but in such case the  
23 number of lot owners present and voting shall be stated. The  
24 certificate shall also give the names of the persons elected as  
25 associates and shall be recorded at length in the office of the  
26 county recorder in and for the county in which such cemetery is  
27 located, and the certificate or the record thereof shall be  
28 prima facie evidence of all the facts stated therein and  
29 required to be so stated.

30 No change for subd 5

306\*#13S

31 306.13 EMPLOYEES TO HAVE POLICE POWERS.

32 The trustees or officers of any cemetery association may  
33 appoint such superintendents, watchmen security guards, \*  
34 gardeners, and agents as they may deem advisable; and, upon  
35 taking and subscribing an oath similar to that required from  
36 constables, every such appointee shall have all the rights and  
37 powers of a police officer within and adjacent to the cemetery  
38 grounds.

306\*#20S

39 306.20 EFFECT; TIME LIMIT.

40 Compliance with the terms of sections 306.16 to 306.20  
41 shall as fully reinvest the association and municipality with,  
42 and divest the record owner and ~~his~~ dependents of, the title to \*  
43 such portion of such cemetery lot unused for burial purposes, as  
44 though the same had never been conveyed to any person, and such  
45 association or municipality shall have, hold, and enjoy such  
46 reclaimed portions of such lots for its own uses and purposes,  
47 subject to the laws of this state, and to the charter, bylaws,  
48 rules, and regulations of such association or municipality;  
49 provided that the association or municipality shall not be  
50 permitted to alienate any such lot for the period of one year  
51 from and after the adoption of the resolution provided for in  
52 section 306.16 by the board of trustees of the association or  
53 public cemetery; and, provided that if at any time during the  
54 one-year period any person entitled to such cemetery lot by the  
55 laws of this state shall pay, or cause to be paid, to such  
56 association or public cemetery all the unpaid lot care, together  
57 with the expenses of the service of the notice hereinbefore  
58 provided for, and any additional sums due for lot care  
59 subsequent to the date of the notice, as prescribed by the  
60 bylaws, rules, and regulations of the cemetery association or  
61 public cemetery, and shall take out and pay for a perpetual care  
62 contract upon the lot, the cemetery association or public  
63 cemetery shall reconvey the lot to the person lawfully entitled  
64 to the same.

306\*#243S

65 306.243 ABANDONED CEMETERIES, MAINTENANCE OF.

66 No change for subd 1 to 3

67 Subd. 4. DISBURSEMENT OF FUNDS. Whenever funds are  
68 raised by any organization or institution other than an existing  
69 cemetery association, to be used for the care and maintenance of  
70 an abandoned or neglected private cemetery described in  
71 subdivision 1, such funds may be paid to the county treasurer to  
72 be held or disbursed ~~by him~~ upon authority of the county board \*  
73 for the purposes intended for which the funds are raised.

## 306\*#25S

1 306.25 CANCELATION AND TERMINATION OF CONTRACTS FOR  
 2 PURCHASE OF LOTS BY CERTAIN ASSOCIATIONS; REFUNDS.  
 3 When any cemetery association organized under the laws of  
 4 this state, shall enter into a contract to convey to any person  
 5 or persons the right of sepulture or burial upon any platted lot  
 6 or designated piece of ground, or any entombment or inurnment  
 7 space in any mausoleum within the area of such cemetery, by  
 8 which contract the association has reserved the right to  
 9 terminate the same in case of default by the purchaser, and to  
 10 forfeit the payments made, as liquidated damages, it may do so  
 11 by serving upon the purchaser, ~~his~~ a personal representative, or \*  
 12 assigns, a notice as provided in section 559.21, specifying the  
 13 conditions in which default has been made, and stating that such  
 14 contract will terminate 30 days after the service of such  
 15 notice, unless prior thereto, the purchaser shall comply with  
 16 such conditions and pay the costs of service. When the contract  
 17 so specifies the notice may be served upon the purchaser, by  
 18 certified mail, return receipt requested, by depositing the same  
 19 in the post office, with the postage prepaid thereon, and \*  
 20 addressed to the purchaser at the address given ~~by him~~ in the  
 21 contract, or as later changed by written notice to the  
 22 association. In case the notice of default is served by mail,  
 23 the 30-day period hereinbefore specified shall commence to run  
 24 as of the date of depositing the same in the post office.  
 25 If any interment or burial has been made on such platted  
 26 lot or designated piece of ground, or in any entombment or  
 27 inurnment space in said mausoleum so sold said contracts to  
 28 convey may be terminated only as to the portion of the premises  
 29 or entombment or inurnment space not actually occupied by said  
 30 interment or burial or by an entombment or inurnment.  
 31 Laws 1943, Chapter 216, shall not apply to any contracts  
 32 existing prior to the passage thereof.

## 306\*#29S

33 306.29 DISPOSAL OF LOTS BY OWNERS.  
 34 Any owner of a cemetery lot may dispose of the same by will  
 35 to ~~any one of his relatives~~ a relative who may ~~survive him~~ be a \*  
 36 survivor, or to such cemetery association or private cemetery, \*  
 37 as the case may be, in trust, for the use and benefit of any  
 38 person or persons designated in the will; but no such lot shall  
 39 be affected by any testamentary devise unless the same be  
 40 specifically mentioned in the will, and by such devise limited  
 41 to one particular person. Any owner of a cemetery lot may, ~~in~~ \*  
 42 his lifetime while living, convey the lot to the cemetery \*  
 43 association or the private cemetery in trust for the use and  
 44 benefit of any person named in the trust conveyance. The  
 45 conveyance may contain such conditions, provisions, and  
 46 covenants as the parties may therein agree upon. No interment  
 47 shall be made in any such lot, except by written consent of the  
 48 cemetery association, or private cemetery, as the case may be,  
 49 of the body of any person who was not, at the time of death, the  
 50 owner thereof, or a relative of the owner by blood or marriage.  
 51 Every conveyance or alienation or attempt at conveyance or  
 52 alienation of any right, title, or interest in or to such lot,  
 53 contrary to the foregoing conditions and reservations, shall be  
 54 void. Every such cemetery association, or private cemetery, as  
 55 the case may be, shall keep a record of all deeds, conveyances,  
 56 judgments, decrees, or other documents affecting the title to  
 57 lots in such cemetery, copies of which, certified by some  
 58 person, officer, or official thereunto duly authorized, shall be  
 59 received in evidence by the courts. Such cemetery association,  
 60 or private cemetery, may, instead of deeding the fee title to  
 61 this lot, grant only the exclusive right of interment or  
 62 sepulture in the lot.

## 306\*#34S

63 306.34 BONDS.  
 64 Before entering upon ~~his~~ duties, each person chosen as a \*  
 65 trustee of such fund shall give bond to the association in a sum  
 66 not less than \$500 and at least equal to one-third the amount of  
 67 the fund at that time, conditioned for the faithful discharge of  
 68 ~~his~~ the trust. Upon July first, in each even-numbered year, \*  
 69 every trustee shall give a new bond, in amount and with  
 70 conditions as aforesaid. Every such bond shall be approved by a  
 71 judge of the judicial district in which such cemetery or some  
 72 part thereof is situate, and filed with the treasurer of the  
 73 association. Failure by any trustee to renew ~~his~~ a bond within \*

1 30 days after the time herein specified shall be a sufficient  
2 ground for ~~his~~ removal on application of any person interested. \*

306\*#44S

3 306.44 DEPOSIT OR INVESTMENT OF FUNDS.

4 Subdivision 1. From and after the vote to establish such  
5 permanent care and improvement fund the board of directors of  
6 any such cemetery shall, quarterly, on the first days of  
7 January, April, July, and October, in each year, deposit or  
8 invest all money belonging to such permanent fund as follows.  
9 (1) The money may be deposited in the county treasury of the  
10 county in which such cemetery is located and the treasurer of  
11 any such county is hereby authorized, empowered, and directed to  
12 receive the same and all such and deposit it as hereinafter  
13 provided. (2) The money may be invested in the same securities  
14 in which savings banks are by law permitted to invest. Any of  
15 the income unexpended and unappropriated for one year after  
16 becoming available for care, maintenance, or improvement shall  
17 be returned to the fund and become a part of the principal. (3)  
18 The money may be deposited or invested as provided in both (1)  
19 and (2), above, and may be withdrawn from either and deposited  
20 in the other, and the county treasurer is directed to return to  
21 the board any moneys deposited in the county treasury which the  
22 board, by resolution, withdraws. When money is deposited in the  
23 county treasury, the board of directors shall also file with the  
24 auditor of the county for record and future reference, at the  
25 time of the deposit of these funds, a statement of each  
26 particular amount so set aside from the sale of a lot or the  
27 amount received by a gift or donation of money, together with  
28 the name of the owner of such lot and the name of the donor of  
29 each particular gift and a description of the lot to which the  
30 income from such particular amount as a part of such permanent  
31 fund is applicable.

32 If the board of directors invests permanent care and  
33 improvement funds in the securities in which savings banks are  
34 by law permitted to invest, the board shall designate certain of  
35 its members to handle such funds. The persons so designated  
36 shall give bond to the association, corporation, or municipality  
37 maintaining the cemetery in a sum not less than the total amount  
38 of the fund at the time of posting such bond, conditioned for  
39 the faithful discharge of ~~his~~ the trust. On July 1 of each even \*  
40 numbered year thereafter, the person shall give a new bond in  
41 the amount and with the conditions provided above.

42 No change for subd 2

306\*#46S

43 306.46 DEPOSIT OF AND INTEREST ON FUND.

44 For the purpose of such deposit the fund so created shall  
45 be treated as other funds in the county treasury, except as  
46 otherwise provided, and shall draw no less a rate of interest  
47 than is paid on the funds of the county deposited in the  
48 depository; provided, that the board of auditors of the county  
49 may require all or part of the funds to be deposited on time  
50 certificates in the depository in the name of the county  
51 treasurer, payable to ~~him~~ the treasurer or ~~his~~ successors in \*  
52 office, and the county treasurer shall secure on such time  
53 deposit the highest rate of interest which the depository will  
54 pay thereon and not less than the current rate paid on time  
55 certificates by such depository, and for such principal and  
56 interest so deposited on time certificates, such treasurer shall  
57 be liable in the same way and manner and to the same extent that  
58 ~~he~~ the treasurer is liable upon ~~his~~ the treasurer's bond for \*  
59 moneys deposited on behalf of the county.

306\*#48S

60 306.48 INVESTMENT OF FUNDS.

61 The board of county auditors, pursuant to a petition of at  
62 least two-thirds of the boards of directors of the cemeteries in  
63 any such county requesting such action, shall, with the approval  
64 of the county attorney, invest the county cemetery fund, or a  
65 part thereof, in the same kind of bonds and securities that the  
66 permanent school fund of the state may be invested in and for  
67 such purpose, and none other. The law as it shall exist at the  
68 time any money is received into this fund shall control the  
69 investment thereof and such fund shall be invested only as the  
70 law provides at the time of the receipt of the money into the  
71 fund, and no subsequent amendment or change in the law shall  
72 authorize the investment of any fund differently or in any other  
73 class of securities save as provided in the law when the money

1 is received into the fund. The board of county auditors may  
2 require the treasurer of any such county to withdraw all or any  
3 part of such fund from such depository for investment, and if  
4 the fund, or any part thereof, be so invested, the bonds or  
5 other securities shall be and remain with the county treasurer  
6 and the bond of the county treasurer shall at all times be  
7 security for the proper care thereof and the payment of interest  
8 received ~~by him~~ thereon to the directors of such cemeteries, and \*  
9 upon payment of any such bonds or other securities the treasurer  
10 of such county upon such payment shall deposit the same in the  
11 depository in which county funds are deposited, the treasurer of  
12 such county shall collect the interest upon the funds so loaned  
13 and pay the same to the treasurers of such cemeteries, as  
14 provided in sections 306.41 to 306.54.

306\*#57S

15 306.57 APPLICATION.

16 Section 306.56 shall not apply to any cemetery association  
17 or other governing board in any city of the first class, nor to  
18 such association or board having the cost of perpetual  
19 maintenance of graves included in the established price of its  
20 cemetery lots, nor shall it apply where payment for the  
21 perpetual care of the lot or grave has been made to the cemetery  
22 association, nor where such deceased person has made provision \*  
23 for such care either ~~in his lifetime~~ while living or by his last  
24 will and testament, duly admitted to probate.

306\*#60S

25 306.60 MEETING, HOW CONDUCTED; ELECTION OF OFFICERS.

26 At the time and place mentioned in the notice the meeting  
27 so called shall be held. Any owner of one or more lots in the  
28 cemetery may be present, in person or by proxy, and shall be  
29 entitled to one vote at that and all subsequent meetings of the  
30 association. The meeting may be called to order by any lot  
31 owner and shall be organized by choosing in the usual manner a  
32 chairman chair and a secretary. The meeting shall thereupon \*  
33 proceed to elect a president, secretary, treasurer, and three  
34 trustees. The officers so elected shall hold their offices  
35 until the next succeeding annual meeting of the association and  
36 until their successors are elected and have qualified. The  
37 voting at such meeting shall be by viva voce, unless otherwise  
38 ordered by those present at the meeting. A majority shall elect.

306\*#61S

39 306.61 CERTIFICATE; RECORD; EFFECT.

40 The chairman chair and the secretary of the meeting shall, \*  
41 within five days after the meeting is held, prepare a  
42 certificate, which shall set forth the existence of the facts  
43 mentioned in section 306.58. It shall further state that the \*  
44 meeting was held, giving the names of the chairman chair and the  
45 secretary and the names of the lot owners present and voting;  
46 but, if more than ten are so present and voting, the names of  
47 ten thereof shall be sufficient, but in such case the number of  
48 lot owners present and voting shall be stated. The certificate  
49 shall also give the names of the persons elected as such  
50 trustees and other officers at such meeting and shall be  
51 recorded at length in the office of the county recorder in and  
52 for the county in which such cemetery is located, and the  
53 certificate or the record thereof shall be prima facie evidence  
54 of all the facts stated therein and required to be so stated.

306\*#77S

55 306.77 FUNDS, IN CARE OF TRUST COMPANY.

56 The board of trustees of any such association shall, by a  
57 resolution adopted by a vote of at least two-thirds of its  
58 members, designate and appoint one or more trust companies  
59 organized under the laws of this state, or a board consisting of  
60 at least three individuals, to act as trustee or trustees of  
61 such fund. In case more than one trust company shall at any  
62 time be so designated and appointed, the board of trustees  
63 shall, from time to time, apportion all moneys available for the  
64 fund between these trust companies in such proportion as such  
65 board by vote may direct or determine. This designation and  
66 appointment shall be evidenced by a written instrument duly  
67 executed by the proper officers of the association under its  
68 corporate seal. Each trust company and individual so designated  
69 and appointed shall qualify as such trustee by filing written  
70 acceptance of such designation and appointment with the  
71 secretary of the association. All instruments of designation  
72 and appointment, and any revocation of the same, and the written

1 acceptances shall be recorded at length by the secretary of the  
 2 association in its corporate records. The appointment of any  
 3 such trustee may be revoked by the board of trustees of the  
 4 association at any time by a vote of two-thirds of its members.  
 5 No trustee of such fund shall be liable as such except for  
 6 neglect or wilful default in the discharge of ~~its-or-his~~ duties. \*

306\*#81S

7 306.81 SELECTION OF SUCCESSOR TO TRUSTEE.

8 Upon the revocation of the appointment or resignation or  
 9 removal of any sole trustee or individual appointed pursuant to  
 10 the authority hereby conferred, the board of trustees of such  
 11 association shall forthwith appoint a successor; and thereupon  
 12 the trustee so resigning or removed shall immediately turn over  
 13 to the successor all property of every description belonging to  
 14 or appertaining to such fund. Upon written notice to it by the  
 15 board of trustees of the association of the resignation or  
 16 removal of any such trustee, or of any application to the court  
 17 for an accounting by, or removal of, any such trustee, any bank,  
 18 trust company, safety deposit company, or other corporation,  
 19 institution, or individual having in ~~its-or-his~~ possession any \*  
 20 of the moneys, securities, papers, or other property belonging  
 21 or appertaining to such fund, shall thereupon refuse payment or  
 22 delivery of the same, or any part thereof, to the trustee or  
 23 trustees named in the notice, and upon its or their check or  
 24 other authorization, except upon a check or other authorization  
 25 for the transfer, surrender, or delivery of the same, or any  
 26 part thereof, to ~~its-or-his~~ a successor or successors. \*

307\*#01S

27 307.01 PLAT AND RECORD.

28 Any private person and any religious corporation may  
 29 establish a cemetery on ~~his-or-its~~ the person's or corporation's \*  
 30 own land in the following manner: The land shall be surveyed  
 31 and a plat thereof made. A stone or other monument shall be  
 32 established to mark one corner of such cemetery, and its  
 33 location shall be designated on the plat. The plat and the  
 34 correctness thereof shall be certified by the surveyor, ~~his~~ \*  
 35 whose certificate shall be endorsed thereon, and with such \*  
 36 endorsement shall be filed for record with the county recorder  
 37 in the county where the cemetery is located, showing the area  
 38 and location of the cemetery. Any person or association owning  
 39 such private cemetery may subdivide or rearrange the same, from  
 40 time to time, as may be necessary in the conduct of the  
 41 business, but no plat of such subdivision or rearrangement shall  
 42 interfere with the rights and privileges of the several lot  
 43 owners of such cemetery without their consent, nor need same be  
 44 filed in the office of the county recorder; provided, that a  
 45 plat of the same shall be kept for public inspection at such  
 46 cemetery; and, provided, further, that there shall be placed at  
 47 the corner of each lot of such subdivision or rearrangement  
 48 cement or other non-destructible markers three inches or more in  
 49 diameter and eight inches or more in length, one of such markers  
 50 showing the number of the lot.

307\*#05S

51 307.05 GIFTS AUTHORIZED FOR PROPRIETARY CARE OF LOTS IN  
 52 CEMETERIES.

53 Gifts, grants and bequests of personal property to any  
 54 trust company, or to one or more individuals and their  
 55 successors, in trust for the purpose of perpetual care,  
 56 maintenance, and adornments of lots in private cemeteries and  
 57 the walks, monuments, and structures thereon are permitted.  
 58 They shall not be deemed invalid as violating any existing law  
 59 against perpetuities or suspension of the power of alienation;  
 60 and, in furtherance thereof, any trust company or individual  
 61 trustee and ~~his~~ the trustee's successors may take and hold in \*  
 62 trust the title to any one or more of such lots in such private  
 63 cemetery in perpetuity.

308\*#07S

64 308.07 CAPITAL STOCK, VOTING RIGHTS, GROUPING OF  
 65 ASSOCIATIONS.

66 No change for subd 1 to 2

67 Subd. 3. Any cooperative association organized under  
 68 sections 308.05 to 308.18 may acquire and hold stock in any  
 69 other corporation organized under any law of this state or of  
 70 any other state of the United States, the purpose of which may  
 71 be a federation of cooperative associations or for the purpose  
 72 of forming a district, state or national marketing, sales, or

1 service agency or for the purpose of acquiring marketing  
 2 facilities at terminal or other markets in this state or other  
 3 states. A stockholder in any cooperative association organized  
 4 under those sections shall not be entitled to more than one vote  
 5 which shall be in person, or by mail, as hereinafter provided,  
 6 and not by proxy, except that any such cooperative association  
 7 which holds stock in any other corporations shall have the power  
 8 and authority, by its board of directors or by its stockholders,  
 9 to elect or appoint any person to represent it at any meeting of  
 10 any corporation in which it owns stock and the person so elected  
 11 or appointed shall have full power and authority to represent  
 12 such cooperative association and also to cast its vote or votes  
 13 at any such meeting. Any stockholder or delegate may exercise  
 14 ~~his~~ voting ~~right~~ rights on any matter which is before the \*  
 15 meeting at the time of ~~his~~ the stockholder's or delegate's \*  
 16 arrival at the meeting, unless the articles or bylaws specify an  
 17 earlier and specific time for closing the right to vote.

18 No change for subd 4 to 8

19 Subd. 9. Stock in any cooperative association organized  
 20 under sections 308.05 to 308.18 shall be sold or transferred  
 21 only with the consent and approval of the board of directors,  
 22 and the bylaws of such cooperative association shall provide  
 23 that it shall have the first privilege of purchasing stock  
 24 offered for sale by a stockholder of any class. Any stock so  
 25 acquired by the board of directors for such cooperative  
 26 association may be held as treasury stock or may be retired and  
 27 cancelled. Any stockholder of any class who knowingly,  
 28 intentionally, or repeatedly violates a provision of the bylaws  
 29 adopted by any cooperative association organized under those  
 30 sections may be required by the board of directors of the  
 31 cooperative association to surrender stock of any class owned by \*  
 32 ~~him~~, in which case the association shall refund to such \*  
 33 stockholder the par value or the book value of such stock  
 34 whichever is lesser. Stock so required to be surrendered shall  
 35 be retired and cancelled by the board of directors.

36 Subd. 10. Any stockholder who is absent from any meeting  
 37 of the stockholders of any association organized under the  
 38 provisions of those sections may, as herein provided but not  
 39 otherwise, vote by mail on the ballot herein prescribed upon any  
 40 motion, resolution, or amendment which the board of directors  
 41 may in its discretion submit to the stockholders for vote by  
 42 them. Such ballot may be in the form prescribed by the board of  
 43 directors of such association and shall contain the exact text  
 44 of the proposed motion, resolution, or amendment to be acted  
 45 upon at such meeting and the date of the meeting; and shall also  
 46 contain spaces opposite the text of such motion, resolution, or  
 47 amendment in which such stockholder may indicate ~~his~~ an \*  
 48 affirmative or negative vote thereon. Such stockholder shall \*  
 49 express ~~his~~ a choice by marking an "X" in the appropriate space \*  
 50 upon such ballot. Such ballot shall be signed by the \*  
 51 stockholder, and when received by the association holding the  
 52 meeting, shall be accepted and counted as the vote of such  
 53 absent stockholder at such meeting.

308\*#071S

54 308.071 COOPERATIVE ASSOCIATIONS, ELECTION OF DIRECTORS.

55 No change for subd 1

56 Subd. 2. No stockholder shall vote by mail for a director  
 57 unless mail voting is authorized by the articles of  
 58 incorporation or the bylaws of the association. The ballot  
 59 shall be in such form as the board of directors of the  
 60 association shall prescribe for use in electing directors. The  
 61 stockholder shall mark ~~his~~ the ballot for the candidate or \*  
 62 candidates ~~of-his-choice~~ chosen and mail it to the association \*  
 63 in a sealed plain envelope inside another envelope bearing ~~his~~ \*  
 64 the stockholder's name. If the ballot of the stockholder is \*  
 65 received by the association on or before the date of the  
 66 meeting, the ballot shall be accepted and counted as the vote of  
 67 the absent stockholder.

68 No change for subd 3

308\*#09S

69 308.09 STOCKHOLDERS, REGULAR AND SPECIAL MEETINGS,  
 70 NOTICE.

71 Subdivision 1. ANNUAL MEETINGS; NOTICE. Regular  
 72 meetings of the stockholders of cooperative associations  
 73 organized under sections 308.05 to 308.18 shall be held annually  
 74 at such time as may be determined by the board of directors of

1 the association, unless otherwise provided for in its articles  
 2 of incorporation or bylaws, and at the principal place of  
 3 business of the association, or at any other place conveniently  
 4 located within the area served by it, or, in the case of  
 5 cooperative associations wholly or partially constituted of  
 6 other cooperative associations organized under the laws of, or  
 7 doing business in, any other state, at such place within or  
 8 without the state, as may be designated in the notice of the  
 9 meeting. At such annual meeting reports covering the business  
 10 of the association for the previous fiscal year and showing the  
 11 condition of the association at the close of the fiscal year  
 12 shall be submitted to the stockholders by the officers.  
 13 Directors shall be elected for such terms of office as shall be  
 14 prescribed in the bylaws of the association. Except for those  
 15 directors elected at district meetings pursuant to the  
 16 provisions of section 308.07, subdivision 6, all directors shall  
 17 be elected at the annual meeting. The secretary of the  
 18 association shall give notice of such meeting, by publication in  
 19 a legal newspaper published in the county of the principal place  
 20 of business of the association, or by publication in a magazine,  
 21 periodical or house organ regularly published by or on behalf of  
 22 the association and circulated generally among its members, at  
 23 least two weeks previous to the date of the meeting, or by  
 24 mailing notice thereof to each and every member personally, or,  
 25 in case of an association, to the secretary thereof, at ~~his~~ the  
 26 person's last known post office address, not less than 15 days  
 27 previous to the date of the meeting.

28 No change for subd 2

308\*#11S

29 308.11 DIRECTORS; OFFICERS.

30 Every cooperative association organized under sections  
 31 308.05 to 308.18 shall be governed by a board of not less than  
 32 five directors, except in the case of a cooperative apartment  
 33 corporation as defined in section 290.09, subdivision 17, in  
 34 which case the number of directors shall not be less than three,  
 35 who shall be members of the association. If a member of an  
 36 association is a family farm corporation within the meaning of  
 37 section 500.24, subdivision 2, clause (c), or an authorized farm  
 38 corporation within the meaning of section 500.24, subdivision 2,  
 39 clause (d), the member may elect or appoint a stockholder of the  
 40 corporation residing on or actively operating the farm who shall  
 41 be eligible for election to the board of directors. If a member  
 42 of an association be other than a natural person, family farm  
 43 corporation, or an authorized farm corporation, and if the  
 44 bylaws of the association do not provide otherwise, the member  
 45 may appoint or elect one or, in the case of associations wholly  
 46 constituted of other cooperative associations, one or more  
 47 natural persons who shall be eligible for election to the board  
 48 of directors. Directors shall be elected for the term, at the  
 49 time, and in the manner provided in sections 308.05 to 308.18  
 50 and the bylaws of the association. The directors shall elect  
 51 from their number a president and one or more vice-presidents.  
 52 They shall also elect a secretary and a treasurer, who need not  
 53 be directors or stockholders. The offices of secretary and  
 54 treasurer may be combined and when combined the person filling  
 55 the office shall be termed secretary-treasurer. If the bylaws  
 56 provide, the board of directors may also elect from their number  
 57 a chairman chair and one or more vice-chairmen vice-chairs, in  
 58 which case the president and vice-presidents need not be  
 59 directors or stockholders. The board of directors may also  
 60 elect additional officers as the articles or bylaws may  
 61 authorize or require, and unless otherwise required by the  
 62 articles or bylaws, the additional officers need not be  
 63 directors or stockholders. The stockholders shall have the  
 64 power, at any regular or special stockholders' meeting regularly  
 65 called in the manner above provided, to remove a director or  
 66 officer for cause and to fill the vacancy caused by the removal.

308\*#12S

67 308.12 EARNINGS, RESERVE FUND; DISTRIBUTION.

68 Subdivision 1. An association organized under sections  
 69 308.05 to 308.18 may set aside such part of its net income as  
 70 its board of directors deems advisable, for the purpose of  
 71 creating or maintaining a capital reserve. In addition to such  
 72 capital reserve the directors of any such association may set  
 73 aside a sum not to exceed five percent of the annual net income  
 74 of the association, which shall be used for the purposes of

1 promoting and encouraging cooperative organization, and may  
 2 establish and accumulate reserves for new buildings, machinery  
 3 and equipment, depreciation, losses, and other proper purposes.  
 4 Net income in excess of dividends on capital stock and additions  
 5 to reserves shall be distributed on the basis of patronage. The  
 6 stockholders may provide in the bylaws of the association that  
 7 non-member patrons shall participate in the distribution of net  
 8 income upon equal terms with member patrons. If the patron is  
 9 qualified and eligible for membership, the amount of patronage  
 10 refund due him shall be credited to ~~his~~ the patron's individual \*  
 11 account, and when such credits shall equal the value of a share  
 12 of common stock which entitles the holder thereof to vote, or a  
 13 membership, a share of such stock or a membership shall be  
 14 issued ~~to him~~. If the patron is not qualified or eligible for \*  
 15 membership, the refund due him may be credited to ~~his~~ the \*  
 16 patron's individual account, and when such credits shall equal \*  
 17 the value of a share of common stock which does not entitle the  
 18 holder thereof to vote or preferred stock or a certificate of  
 19 interest a share of such stock or a certificate of interest may  
 20 be issued ~~to him~~, and thereafter such patron may participate in \*  
 21 the distribution of income upon the same basis as a stockholder  
 22 or member.

23 No change for subd 2 to 4

308\*#14S

24 308.14 AMENDMENT OF ARTICLES TO COMPLY WITH STATUTES;  
 25 VOLUNTARY DISSOLUTION.

26 No change for subd 1 to 3b

27 Subd. 4. When an association has been completely wound up,  
 28 the court, if the proceeding is subject to the supervision of  
 29 the courts, shall make an order adjudging the association to be  
 30 dissolved; and if the proceeding is out of court, the trustee,  
 31 or trustees, or the president or secretary of the trustees, if  
 32 any, or the attorney of the trustee or trustees, if the attorney  
 33 or officer makes an affidavit ~~that he acted~~ of acting as such, \*  
 34 shall sign and acknowledge a certificate stating that the  
 35 association has been completely wound up and is dissolved. The  
 36 provisions of this subdivision as herein amended shall apply to  
 37 all associations who heretofore, or hereafter shall have filed  
 38 for record a certificate of dissolution as provided in  
 39 subdivision 2.

40 No change for subd 5 to 6

308\*#15S

41 308.15 ARTICLES OF INCORPORATION, AMENDMENT, PROCEDURE.

42 No change for subd 1 to 2

43 Subd. 4. If otherwise lawful, any two or more associations  
 44 organized under or subject to the provisions of sections 308.05  
 45 to 308.18, or any other law of Minnesota relating to the  
 46 organization of cooperative associations, may merge or  
 47 consolidate with each other, or with one or more associations  
 48 incorporated under the laws of another state relating to  
 49 organization of cooperative associations, by complying with the  
 50 provisions of this subdivision or under the law of the state  
 51 where the surviving or new association will exist. Before an  
 52 association may merge or consolidate with any other association,  
 53 a written plan of merger or consolidation shall be prepared by  
 54 the board or by a committee selected by the board or the members  
 55 or stockholders for that purpose. Such plan shall set forth all  
 56 the terms of the merger or consolidation and the proposed effect  
 57 thereof on all members or stockholders of the association. In  
 58 case of consolidation, the plan shall also contain the articles  
 59 of the new association. Notice shall be mailed to each and  
 60 every stockholder or member containing the full text of the  
 61 plan. Such notice shall also designate the time and place of  
 62 the meeting at which such plan shall be considered and voted  
 63 upon, in the same manner as elsewhere provided in these  
 64 sections. An association having in excess of 200 stockholders  
 65 or members may publish such notice in the manner provided for in  
 66 section 308.09, subdivision 1. If a quorum of the stockholders  
 67 or members is registered as being present or represented by mail  
 68 vote at such meeting, the plan shall be adopted if approved by  
 69 two-thirds of the votes cast.

70 After the plan has been adopted by the stockholders or  
 71 members, articles of merger or consolidation setting forth the  
 72 plan and the manner of adoption thereof shall be signed and  
 73 acknowledged by the president or vice-president and by the  
 74 secretary or assistant secretary of each association merging or



1 consolidating and shall be approved by the attorney general and  
 2 filed in the office of the secretary of state and recorded in  
 3 the office of the county recorder of each county where each  
 4 merging or consolidating association has its principal place of  
 5 business. Unless otherwise specified in the plan, the merger or  
 6 consolidation shall be effective when said articles are filed in  
 7 the office of the secretary of state.

8 After the effective date, the associations, which are  
 9 parties to the plan become a single association. In the case of  
 10 a merger, the surviving association is that association so  
 11 designated in the plan. In the case of a consolidation, the new  
 12 association is the association provided for in the plan. The  
 13 separate existence of all associations which are parties to the  
 14 plan, except the surviving or new association, then ceases.

15 The surviving or new association possesses all the rights  
 16 and all the property of each of the individual associations, and  
 17 is responsible for all their obligations. Title to any property  
 18 is vested in the surviving or new association with no reversion  
 19 or impairment thereof caused by the merger or consolidation. No  
 20 right of any creditor may be impaired by the merger or  
 21 consolidation without ~~his~~ the creditor's consent. \*

22 The articles of the surviving association are deemed  
 23 amended to the extent provided in the plan of merger.

308\*#32S

24 308.32 RURAL TELEPHONE COMPANIES; PLACE OF BUSINESS;  
 25 STOCKHOLDERS' MEETINGS, WHERE HELD.

26 Any rural telephone company or association, organized or  
 27 incorporated under any of the laws of this state, shall have its  
 28 principal place of business in the township or city designated  
 29 in its articles of incorporation as such; provided, that any  
 30 officer of such company may transact the business pertaining to  
 31 ~~his~~ that particular office in any township or city into which  
 32 such township or city, the lines of such company extend, or in  
 33 any city within any such township; and, provided, further, that  
 34 any such rural telephone company whose lines extend into more  
 35 than one township may hold its stockholders' meeting in any  
 36 township or city through or into which its lines extend, or in  
 37 any city within any such township as its stockholders, or  
 38 members, may, from time to time, designated at a previous annual  
 39 meeting, or a special meeting called for that purpose, but until  
 40 a different place is so designated the township or city named as  
 41 its principal place of business shall be the place for holding  
 42 all stockholders' meetings thereof, and when a place is so  
 43 designated it shall be and remain the place for holding all  
 44 stockholders' meetings until again changed by a vote of the  
 45 stockholders, as aforesaid, and it shall be the duty of the  
 46 officer calling any such meeting to procure a place of meeting  
 47 in the township or city so designated; and state the location of  
 48 same in ~~his~~ the notice of the meeting. \*

308\*#40S

49 308.40 SEWERS AND FILTRATION PLANTS, SUPERVISION.

50 The establishment of any such sewers or any such filtration  
 51 plants, or both, for such purposes and their maintenance and  
 52 operation, shall be under the supervision of the ~~chairman~~ chair  
 53 of the board of health of the town or city in which such  
 54 association has its operating plant. \*

308\*#41S

55 308.41 COOPERATIVE CREAMERY ASSOCIATIONS CONTINUED.

56 Any cooperative creamery association organized under the  
 57 provisions of section 308.01 may renew its corporate existence  
 58 for a period of not more than 20 years, whenever the holders of  
 59 a majority of the stock thereof shall adopt a resolution to that  
 60 effect at any regular meeting, or at any special meeting called  
 61 for that expressly stated purpose. A copy of the resolution,  
 62 certified by the ~~chairman~~ chair and secretary of the meeting,  
 63 shall be filed in the office of the county recorder of the  
 64 county in which the corporation shall be located. \*

308\*#60S

65 308.60 BYLAWS.

66 Each association in its bylaws may provide for any or all  
 67 of the following matters:

- 68 (1) The time, place, and manner of calling and conducting  
 69 its meetings;  
 70 (2) The number of stockholders or members constituting a  
 71 quorum;  
 72 (3) The right of members or stockholders to vote by proxy

1 or by mail, or by both, and the conditions, manner, form, and  
 2 effect of such votes;

3 (4) The number of directors constituting a quorum;

4 (5) The qualifications, compensation, duties, and term of  
 5 offices of directors and officers, the time of their election  
 6 and mode and manner of giving notice thereof;

7 (6) Penalties for violations of the bylaws;

8 (7) The amount of entrance, organization, and membership  
 9 fees, if any; the manner and method of collection of the same  
 10 and the purposes for which they may be used;

11 (8) The amount which each member or stockholder shall be  
 12 required to pay annually or from time to time, if at all, to  
 13 carry on the business of the association; the charge, if any, to  
 14 be paid by each member or stockholder for services rendered by  
 15 the association to ~~him~~ the member or stockholder, and the time  
 16 of payment and manner of collection; and the form of marketing \*  
 17 contract between the association and its members or stockholders  
 18 which every member or stockholder may be required to sign; and

19 (9) The qualifications of members or stockholders of the  
 20 association, and the particular conditions, if any, precedent to  
 21 membership or ownership of common stock; the method, time, and  
 22 manner of permitting members to withdraw or the holders of  
 23 common stock to transfer their stock, the manner of assignment  
 24 and transfer of the interest of members, and of the shares of  
 25 common stock; the conditions upon which, and the time when  
 26 membership of any member shall cease, the automatic suspension  
 27 of the rights of a member ~~when he ceases~~ on ceasing to be \*  
 28 eligible to membership in the association, and the mode, manner  
 29 and effect of the expulsion of a member.

308\*#62S

30 308.62 DIRECTORS; ELECTION.

31 The affairs of the association shall be managed by a board  
 32 of not less than five directors, elected by the members or  
 33 stockholders from their own number, except as hereinafter  
 34 provided. The bylaws may provide that the territory in which  
 35 the association has members shall be divided into districts and  
 36 that the directors shall be elected according to such  
 37 districts. In such case the bylaws shall specify the number of  
 38 directors to be elected by each district, the manner and method  
 39 of apportioning or reapportioning the directors, and of  
 40 districting or redistricting the territory covered by the  
 41 association. The bylaws may provide that primary elections  
 42 should be held in each district to elect the directors  
 43 apportioned to such districts, and the result of all such  
 44 primary elections must be ratified by the next regular meeting  
 45 of the association, or may be considered final by the  
 46 association.

47 The bylaws shall provide that one or more directors may be  
 48 appointed by the commissioner or any other public official or  
 49 commission. The director or directors so appointed need not be  
 50 members or stockholders of the association, but shall have the  
 51 same powers and rights as other directors. Such directors shall  
 52 not number more than one-fifth of the entire number of directors.

53 An association may provide a fair remuneration for the time  
 54 actually spent by its officials and directors in its service.  
 55 No director, ~~during the term of his~~ while serving in office, \*  
 56 shall be a party to a contract for profit with the association  
 57 differing in any way from the business relations accorded  
 58 regular members or holders of common stock of the association,  
 59 or to any other kind of contract differing from terms generally  
 60 current in that district.

61 The bylaws may provide that no director shall occupy any  
 62 position in the association, except the president and secretary  
 63 on regular salary or substantially fulltime pay.

64 The bylaws may provide for an executive committee and may  
 65 allot to such committee all the functions and powers of the  
 66 board of directors, subject to the general direction and control  
 67 of the board.

68 When a vacancy on the board of directors occurs, other than  
 69 by expiration of term, the remaining members of the board, by a  
 70 majority vote, shall fill the vacancy, unless the bylaws provide  
 71 for an election of directors by district. In such a case the  
 72 board of directors shall immediately call a special meeting of  
 73 the members or stockholders in that district to fill the vacancy.

308\*#64S

74 308.64 OFFICERS, EMPLOYEES, AND AGENTS BONDED.

1 Every officer, employee, and agent handling funds or  
 2 negotiable instruments or property of or for any association  
 3 created hereunder shall be required to execute and deliver  
 4 adequate bonds for the faithful performance of ~~his~~ duties and  
 5 obligations. \*

308\*#65S

6 308.65 STOCK; MEMBERSHIP CERTIFICATES; VOTING;  
 7 LIABILITY; LIMITATIONS ON TRANSFER AND OWNERSHIP.

8 When a member of an association established without capital  
 9 stock has paid ~~his~~ the membership fee in full, ~~he~~ the member  
 10 shall receive a certificate of membership. No association shall  
 11 issue stock to a member until it has been fully paid for. The  
 12 promissory note of the member may be accepted by the association  
 13 as full or partial payment. The association shall, in case of  
 14 associations organized without capital stock, hold the stock or  
 15 membership certificate as security for the payment of the note,  
 16 but such retention as security shall not affect the member's  
 17 right to vote. \*

18 Except for debts lawfully contracted between ~~him~~ a member  
 19 and the association, no member shall be liable for the debts of  
 20 the association to an amount exceeding the sum remaining unpaid  
 21 on ~~his~~ the membership fee, including any unpaid balance or any  
 22 promissory notes given in payment thereof. \*

23 No stockholder of a cooperative association shall own more  
 24 than one-twentieth of the common stock of the association; and  
 25 an association, in its bylaws, may further limit the amount of  
 26 common stock which one member may own.

27 No member or stockholder shall be entitled to more than one  
 28 vote, excepting that where the stockholder is a local  
 29 cooperative association and the general association is a central  
 30 exchange composed of local cooperative associations, the central  
 31 cooperative association may, in its option, provide for one vote  
 32 for each such stockholder or for any other method of voting  
 33 which may seem to it equitable on the basis of membership in  
 34 each such local cooperative association or tonnage amount or  
 35 value of products handled by each such local cooperative  
 36 association.

37 Any association organized with stock under sections 308.53  
 38 to 308.85 may issue preferred stock, with or without the right  
 39 to vote. Such stock may be sold to any person, member or  
 40 nonmember, and may be redeemable or retirable by the association  
 41 on such terms and conditions as may be provided for by the  
 42 articles of incorporation and printed on the face of the  
 43 certificate. The promotion, organization, and extension of  
 44 organization costs and expenses shall not exceed the sum of \$5  
 45 per member, such sum to be fixed and determined, from time to  
 46 time, by the board of directors.

47 The bylaws shall prohibit the transfer of the common stock  
 48 or certificate of membership in the association to persons not  
 49 engaged in the production of the agricultural products handled  
 50 by the association, and such restrictions must be printed upon  
 51 every certificate of stock or membership.

308\*#66S

52 308.66 REMOVAL OF OFFICER OR DIRECTOR.

53 Any member may bring charges against an officer or director  
 54 by filing them, in writing, with the secretary of the  
 55 association, together with a petition signed by not less than  
 56 ten percent of the members requesting the removal of the officer  
 57 or director in question.

58 The removal shall be voted upon at the next regular or  
 59 special meeting of the association, and, by a vote of a majority  
 60 of the members, the association may remove the officer or  
 61 director and fill the vacancy. The officer or director against  
 62 whom such charges have been brought shall be informed, in  
 63 writing, of the charges previous to the meeting and shall have  
 64 an opportunity at the meeting to be heard, in person or by  
 65 counsel, and to present witnesses; and the person or persons  
 66 bringing the charge against ~~him~~ the officer or director shall  
 67 have the same opportunity. \*

68 In case the bylaws provide for election of directors by  
 69 districts with primary elections in each district, then, in lieu  
 70 of the foregoing, the petition for removal of a director must be  
 71 signed by 20 percent of the members residing in the district  
 72 from which ~~he~~ the director was elected. The board of directors  
 73 must call a special meeting of the members residing in that  
 74 district to consider the removal of the director. By a vote of \*

1 the majority of the members of that district, the director in  
2 question shall be removed from office.

308\*#69S

3 308.69 REMEDIES FOR BREACH OF CONTRACT.

4 The bylaws or the marketing contract may fix, as liquidated  
5 damages, specific sums to be paid by the member or stockholder  
6 or patron to the association upon the breach ~~by him~~ of any \*  
7 provisions of the marketing contract regarding the sale or  
8 delivery or withholding of products; and may further provide  
9 that the member or patron will pay all costs, premiums for  
10 bonds, expenses and fees in case any action is brought upon the  
11 contract by the association; and any such provisions shall be  
12 valid and enforceable in the courts of this state, and such  
13 provisions, or provisions fixing liquidated damages, shall be  
14 enforceable as such and shall not be considered or regarded as a  
15 penalty.

16 In the event of any such breach or threatened breach of  
17 such marketing contract by a member, or patron, the association  
18 shall be entitled to an injunction to prevent the further breach  
19 of the contract, and to a decree of specific performance  
20 thereof. Pending the adjudication of such an action, and upon  
21 filing a certified complaint showing the breach or threatened  
22 breach, and upon filing a sufficient bond, the association shall  
23 be entitled to a temporary restraining order and preliminary  
24 injunction against the member or patron.

25 In any action upon such marketing agreement, it shall be  
26 conclusively presumed that ~~a landowner~~ landowners or ~~landlord~~ \*  
27 landlords or ~~lessor-is~~ lessors are able to control the delivery \*  
28 of products produced on ~~his~~ their land by tenants or others, \*  
29 whose tenancy or possession or work on such land or the terms of  
30 whose tenancy or possession or labor thereon were created or  
31 changed after execution by the ~~landowner~~ landowners or ~~landlord~~ \*  
32 landlords or ~~lessor~~ lessors, of such a marketing agreement; and \*  
33 in such actions the foregoing remedies for nondelivery or breach  
34 shall lie and be enforceable against such ~~landowner~~ landowners \*  
35 or ~~lessor~~ lessors. \*

308\*#71S

36 308.71 ANNUAL REPORTS.

37 Each association formed under sections 308.53 to 308.85  
38 shall annually prepare, make out, certify, and file with the  
39 commissioner of agriculture an annual report, on forms furnished  
40 by ~~him~~ the commissioner, containing the name of the association, \*  
41 its principal place of business, and a general statement of its  
42 business operations during the fiscal year, showing the amount  
43 of capital stock paid up and the number of stockholders, if a  
44 stock association, or the number of members, the amount of  
45 membership fees received, if a non-stock association; also, in  
46 all cases, the total expenses of operations, the amount of its  
47 indebtedness, or liability, and a copy of its balance sheets.

308\*#72S

48 308.72 APPLICATION.

49 Sections 308.53 to 308.85 shall not be construed or  
50 considered as repealing or amending by implication, or  
51 otherwise, any existing law of this state, and no statute or law  
52 hereafter enacted in this state shall be considered or construed  
53 as amending or repealing sections 308.53 to 308.85 by  
54 implication or otherwise, unless so provided in express language  
55 in such subsequent enactment.

56 Any exemptions whatsoever under any and all existing laws,  
57 applying to agricultural products in the possession or under the  
58 control of the individual producer, and for ~~his~~ the producer's \*  
59 benefit, shall apply similarly and completely to such products  
60 delivered by its members or patrons, and to the proceeds of such  
61 products in case the products, if still in the hands of the  
62 producer, would have been exempt under the laws of this state.

308\*#78S

63 308.78 BREACH OF MARKETING CONTRACT OF COOPERATIVE  
64 ASSOCIATIONS; SPREADING FALSE REPORTS CONCERNING ASSOCIATIONS.

65 Any person, or any corporation whose officers or employees  
66 knowingly induce or attempt to induce any member or stockholder  
67 of an association organized hereunder or organized under similar  
68 statutes of other states with similar restrictions and rights  
69 and operating in this state under due authority, to break ~~his~~ a \*  
70 marketing contract with the association, or who maliciously and  
71 knowingly spreads false reports about the finances or management  
72 or activity thereof, shall be guilty of a misdemeanor for each

1 such offense; and shall be liable to the association aggrieved  
2 in a civil suit in the penal sum of \$500 for each such offense.

308\*#82S

3 308.82 SUPERVISION.

4 \* Every association organized or existing under the  
5 provisions of sections 308.53 to 308.85 shall be at all times  
6 under the supervision and subject to the control of the  
7 commissioner. At least annually, and as much oftener as ~~he~~ the \*  
8 commissioner deems it necessary, without previous notice, the \*  
9 commissioner, ~~his~~ a deputy or assistant, shall visit and examine \*  
10 the business and offices of every such corporation, verify its  
11 books, vouchers, and papers, and ascertain its financial  
12 condition and ability to perform its functions and fulfill its  
13 obligations, and wherein, if at all, it has violated any  
14 provision of law, and determine what, if any, further action  
15 shall be taken in the premises. For the purpose of making such  
16 examination, ~~he~~ the commissioner is authorized to enforce the \*  
17 attendance as witnesses of persons whose testimony is desired,  
18 and the production of books and papers, by subpoena or  
19 attachment, and may administer oaths to witnesses and compel  
20 them to testify. ~~if he is of~~ The commissioner, on forming the \*  
21 opinion that the further operation of such corporation is  
22 hazardous to public interests, ~~he~~ shall forthwith take \*  
23 possession of its property and report the matter to the governor  
24 for appropriate action. ~~He~~ The commissioner shall have \*  
25 ~~authority, upon his own motion, and it shall be his duty, to~~  
26 ~~make investigation of~~ investigate the affairs of any such \*  
27 association, prescribe uniform system of accounting, and to do  
28 or perform any act in relation to any association which in  
29 ~~his~~ the commissioner's opinion may be necessary or expedient to \*  
30 protect the public interest. It shall be the duty of the  
31 officers and directors of any such association to comply with  
32 the orders or requirements of the commissioner and, upon failure  
33 so to do, ~~he~~ the commissioner shall report such failure to the \*  
34 governor for such appropriate action as the governor shall  
35 consider necessary.

308\*#84S

36 308.84 EXPENSES OF EXAMINATION; PAYMENT.

37 The commissioner shall furnish to such association, as soon  
38 as possible, after any such examination, a complete copy of ~~his~~ \*  
39 the report in relation to any examination made of any such \*  
40 association, and it shall forthwith be the duty of the  
41 association and the treasurer thereof to pay all of the costs of  
42 such services, including compensation of the accountants  
43 employed, transportation, meals, lodging, and all other expenses  
44 in connection with or incidental to the services performed, upon  
45 presentation of a bill therefor by the commissioner, who shall  
46 deposit the same with the state treasurer to the credit of the  
47 cooperative accounting fund. Such charges shall be at the  
48 prevailing rates charged by the division of cooperative  
49 accounting for services rendered pursuant to sections 308.902 to  
50 308.905, inclusive.

308\*#903S

51 308.903 ACCOUNTS AND RECORDS EXAMINED.

52 It shall be the duty of the commissioner to cause the  
53 books, accounts, and corporate records of any cooperative  
54 associations in this state to be examined by a competent  
55 accountant whenever written application is made by the properly  
56 elected officers of such association for such service. The  
57 application shall be made in the manner hereinafter described  
58 and services shall be extended under the application, subject to  
59 the terms and provisions hereinafter set forth.

60 It shall be the duty of the accountant making such  
61 examinations to examine the books, accounts, and corporate  
62 records of such cooperative associations in detail and to point  
63 out any irregularities or inaccuracies that might exist. ~~He~~ The \*  
64 accountant shall prepare statements of the financial condition \*  
65 and business affairs of the association and a statement covering  
66 the operations of such association for the period designated,  
67 which exhibits shall be supported by schedules of detail  
68 necessary to the information of the officers and  
69 stockholders. ~~He~~ The accountant shall report upon any other \*  
70 matters pertaining to the business and affairs of the  
71 association as may be requested or required by the officers  
72 thereof and suggest improvements that might be desirable or  
73 advantageous in the accounting methods or business practices of

1 such association. Reports of the examination shall be prepared  
2 under the direction of the commissioner, three copies of which  
3 shall be furnished to the properly elected officers of the  
4 association and one copy to be filed in the office of the  
5 commissioner. Such reports filed in the office of the  
6 commissioner shall be accessible only to officers, stockholders,  
7 and members of the association so examined or to authorities of  
8 the state having jurisdiction over or administration of the  
9 activities in which such association is engaged. Other persons  
10 shall be permitted to have access to the reports only upon  
11 presentation of a written order signed by the president and  
12 secretary of the association.

308\*#904S

13 308.904 APPLICATION FOR EXAMINATION.

14 Any cooperative association in this state may secure the  
15 services permitted under sections 308.902 to 308.905 by making  
16 application to the commissioner, which application shall state  
17 the character of services required by such association, and  
18 shall be signed by the president and the secretary of the  
19 association. The application shall be accompanied by a copy of  
20 a resolution adopted by the vote of a majority of the directors  
21 of the association, and such other information as may be  
22 required by the commissioner. In case of the neglect, failure,  
23 or refusal of the directors of any such cooperative association  
24 in this state to secure an examination of its books, accounts,  
25 and corporate records, the stockholders or members may make  
26 application to the commissioner for such an examination. The  
27 application shall be accompanied by a petition signed by at  
28 least ten percent of the total number of the stockholders or  
29 members of the association. The application and petition shall  
30 be prepared in duplicate, one copy of each to be filed with the  
31 secretary of the association represented by such stockholders or  
32 members, and the originals to be sent to the commissioner. In  
33 case of such application by the stockholders or members of an  
34 association, the commissioner shall require a sufficient  
35 guarantee from the signers of the petition to cover the  
36 estimated cost of such an examination before giving ~~his~~ approval \*  
37 to such application. The costs shall be determined in the  
38 manner set forth in section 308.905.

309\*#50S

39 309.50 SOLICITATION OF CHARITABLE FUNDS; DEFINITIONS.

40 No change for subd 1 to 5

41 Subd. 6. "Professional fund raiser" means any person who  
42 for financial compensation or profit participates in public  
43 solicitation in this state of contributions for, or on behalf of  
44 any charitable organization. A bona fide officer or employee of  
45 a charitable organization is not a professional fund raiser  
46 unless ~~his~~ the officer's or employee's salary or other \*  
47 compensation is computed on the basis of funds to be raised, or  
48 actually raised.

49 No change for subd 6a to 12

309\*#501S

50 309.501 REGISTERED COMBINED CHARITABLE ORGANIZATIONS.

51 No change for subd 1 to 2

52 Subd. 3. REGISTRATION. An organization may apply to  
53 the commissioner of commerce as a registered combined charitable  
54 organization. An organization which applies to the commissioner  
55 shall provide the commissioner with all information the  
56 commissioner deems necessary to identify the charitable and tax  
57 exempt status of the organization and its compliance with the  
58 provisions of this chapter.

59 A registered combined charitable organization shall  
60 disclose in its solicitation and its annual report filed under  
61 section 309.53:

62 (a) gross dollars received in contributions in the prior  
63 year;

64 (b) names of and amount of money distributed to each  
65 charitable agency by the combined charitable organization;

66 (c) percentage of gross dollars contributed which was  
67 directly received by the charitable agencies; and

68 (d) projected percentage of the contribution to be received  
69 by the charitable agencies in the year for which the  
70 solicitation is being made.

71 If participating charitable agencies are required to pay  
72 any fees to the combined charitable organization, it shall also  
73 be disclosed in the solicitation and annual report. In the

1 annual report of a combined charitable organization shall include  
2 a list of charitable agencies to which donors specifically  
3 designated funds, and the amount designated to each agency.  
4 Notwithstanding section 309.53, subdivision 1a, each charitable  
5 agency shall file the report required in section 309.53. The  
6 commissioner shall consult with the attorney general to  
7 determine if the combined charitable organization and its  
8 charitable agencies are in compliance with this chapter. The  
9 commissioner shall register or not register the application of  
10 an organization within 60 days. No organization may apply to  
11 the commissioner more than once in a 12-month period.  
12 Registered combined charitable organizations shall file the  
13 report required in section 309.53. The commissioner shall  
14 notify the commissioner of finance in writing of ~~his~~ the \*  
15 decision to register an organization under this section.

309\*#515S

16 309.515 EXEMPTIONS.

17 Subdivision 1. Subject to the provisions of subdivisions 2  
18 and 3, sections 309.52 and 309.53 shall not apply to any of the  
19 following:

20 (a) Charitable organizations:

21 (1) which did not receive total contributions in excess of  
22 \$10,000 from the public within or without this state during the  
23 accounting year last ended, and

24 (2) which do not plan to receive total contributions in  
25 excess of such amount from the public within or without this  
26 state during any accounting year, and

27 (3) whose functions and activities, including fund raising,  
28 are performed wholly by persons who are unpaid for their  
29 services, and

30 (4) none of whose assets or income inure to the benefit of  
31 or are paid to any officer.

32 For purposes of this chapter, a charitable organization  
33 shall be deemed to receive in addition to contributions  
34 solicited from the public by it, the contributions solicited  
35 from the public by any other person and transferred to it. Any  
36 organization constituted for a charitable purpose receiving an  
37 allocation from a community chest, united fund or similar  
38 organization shall be deemed to have solicited that allocation  
39 from the public.

40 (b) A religious society or organization.

41 (c) Any educational institution which is under the general  
42 supervision of the state board of education, the state  
43 university board, the state board for community colleges, or the  
44 University of Minnesota or any educational institution which is  
45 accredited by the University of Minnesota or the North Central  
46 association of colleges and secondary schools, or by any other  
47 national or regional accrediting association.

48 (d) A fraternal, patriotic, social, educational, alumni,  
49 professional, trade or learned society which limits solicitation  
50 of contributions to persons who have a right to vote as a  
51 member. The term "member" shall not include those persons who  
52 are granted a membership upon making a contribution as the  
53 result of a solicitation.

54 (e) A charitable organization soliciting contributions for  
55 any person specified by name at the time of the solicitation if  
56 all of the contributions received are transferred to the person  
57 named with no restrictions on ~~his~~ the person's expenditure of it \*  
58 and with no deductions whatsoever.

59 (f) A private foundation, as defined in section 509(a) of  
60 the Internal Revenue Code of 1954, which did not solicit  
61 contributions from more than 100 persons during the accounting  
62 year last ended.

63 No change for subd 2 to 3

309\*#532S

64 309.532 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.

65 No change for subd 1 to 2

66 Subd. 3. The department may issue an order requiring a  
67 licensee or registrant or applicant for a license or  
68 registration to show cause why the license or registration  
69 shall not be revoked or suspended or the application denied.  
70 The order shall be calculated to give reasonable notice of the  
71 time and place for hearing thereon, and shall state the reasons  
72 for the entry of the order. All hearings shall be conducted in  
73 accordance with the provisions of chapter 14. After the  
74 hearing, the department shall enter an order making such

1 disposition of the matter as the facts require. If after having \*  
 2 been duly notified the licensee, registrant or applicant fails \*  
 3 to appear at a hearing ~~of which he has been duly notified~~, such \*  
 4 person shall be deemed in default, and the proceeding may be \*  
 5 determined against ~~him~~ the person upon consideration of the \*  
 6 order to show cause, the allegations of which may be deemed to  
 7 be true.

8 No change for subd 4 to 7

309\*#533S

9 309.533 INVESTIGATIONS; PROCEEDINGS.

10 Subdivision 1. The commissioner ~~in his discretion~~: \*

11 (a) may make public or private investigations within or \*  
 12 outside the state as ~~he deems~~ deemed necessary by the \*  
 13 commissioner to determine whether any person has violated or is \*  
 14 about to violate any provision of sections 309.50 to 309.61 or \*  
 15 any rule or order thereunder, or to aid in the enforcement of  
 16 sections 309.50 to 309.61 in the prescribing of rules and forms  
 17 thereunder, and may publish information, concerning the  
 18 violation of sections 309.50 to 309.61 or any rule or order  
 19 thereunder.

20 (b) may require or permit any person to file a statement in  
 21 writing, under oath or otherwise as the commissioner determines,  
 22 as to all facts and circumstances concerning the matter being  
 23 investigated.

24 Subd. 2. For the purpose of any investigation or  
 25 proceeding under sections 309.50 to 309.61, the commissioner or  
 26 any person designated by ~~him~~ the commissioner may administer \*  
 27 oaths and affirmations, subpoena witnesses and compel their  
 28 attendance, take evidence and require the production of any  
 29 books, papers, correspondence, memoranda, agreements or other  
 30 documents or records which the commissioner deems relevant or  
 31 material to the inquiry.

32 Subd. 3. No person is excused from attending and  
 33 testifying or from producing any document or record before the  
 34 commissioner, in obedience to the subpoena of the commissioner  
 35 or any person designated by ~~him~~ the commissioner in any \*  
 36 proceedings instituted by the commissioner, on the ground that \*  
 37 the testimony or evidence required ~~of him~~ may tend to \*  
 38 incriminate ~~him~~ or subject ~~him~~ the person to a penalty or \*  
 39 forfeiture, but no individual may be prosecuted or subjected to  
 40 any penalty or forfeiture for an account of any transaction,  
 41 matter or thing concerning which ~~he~~ the individual is compelled, \*  
 42 after claiming ~~his~~ the privilege against self incrimination, to \*  
 43 testify or produce evidence, except that the individual  
 44 testifying is not exempt from prosecution and punishment for  
 45 perjury or contempt committed in testifying.

46 Subd. 4. In case of contumacy by, or refusal to obey a  
 47 subpoena to, any person, the district court, upon application by  
 48 the commissioner, may issue to the person an order ~~directing him~~ \*  
 49 to appear before the commissioner or the officer designated by \*  
 50 ~~him~~ the commissioner, there to produce documentary evidence if \*  
 51 so ordered or to give evidence touching the matter under  
 52 investigation or in question. Failure to obey the order of the  
 53 court may be punished by the court as a contempt of court.

309\*#534S

54 309.534 CEASE AND DESIST ORDERS; INJUNCTIONS; RECEIVERS.

55 Subdivision 1. Whenever it appears to the commissioner  
 56 that any person has engaged or is about to engage in any act or  
 57 practice constituting a violation of this chapter or any rule or  
 58 order hereunder:

59 (a) ~~He~~ The commissioner shall have the power to issue and \*  
 60 cause to be served upon the person an order requiring ~~him~~ the \*  
 61 person to cease and desist from violations of sections 309.50 to \*  
 62 309.61. The order shall be calculated to give reasonable notice  
 63 of the rights of the person to request a hearing thereon and  
 64 shall state the reason for the entry of the order. A hearing  
 65 shall be held not later than seven days after the request for  
 66 the hearing is received by the commissioner after which and  
 67 within 20 days of the date of the hearing the commissioner shall  
 68 issue a further order vacating the cease and desist order or  
 69 making it permanent as the facts require. All hearings shall be  
 70 conducted in accordance with the provisions of chapter 14. If  
 71 the person to whom a cease and desist order is issued fails to  
 72 appear at the hearing after being duly notified, the person  
 73 shall be deemed in default, and the proceeding may be determined  
 74 against ~~him~~ the person upon consideration of the cease and \*



1 desist order, the allegations of which may be deemed to be  
2 true. The commissioner may adopt rules of procedure concerning  
3 all proceedings conducted pursuant to this subdivision.

4 (b) He The commissioner may bring an action in the district \*  
5 court in the appropriate county to enjoin the acts or practices  
6 and to enforce compliance with sections 309.50 to 309.61 or any \*  
7 rule or order thereunder and he may refer the matter to the  
8 attorney general. This section shall in no way alter the  
9 authority of the attorney general to prosecute violations as set  
10 forth in sections 309.57 and 309.59. Upon a proper showing, a  
11 permanent or temporary injunction, restraining order or writ of  
12 mandamus shall be granted and a receiver may be appointed for  
13 the defendant or the defendant's assets. The court may not  
14 require the commissioner to post a bond.

15 No change for subd 2 to 3

309\*#55S

16 309.55 USE OF NAMES.

17 No change for subd 1 to 5

18 Subd. 6. No person shall, either ~~in-his-own-right~~ as an \*  
19 individual or as agent, officer or employee of a charitable \*  
20 organization sell or otherwise furnish for a consideration to  
21 any other person any list of contributors.

22 No change for subd 7

309\*#56S

23 309.56 SERVICE OF PROCESS.

24 Subdivision 1. Any charitable organization or professional  
25 fund raiser which solicits contributions in this state, but does  
26 not maintain an office within the state shall be subject to  
27 service of process, as follows:

28 (a) By service thereof on its registered agent within the  
29 state, or if there be no such registered agent, then upon the  
30 person who has been designated in the registration statement as  
31 having custody of books and records within this state; where  
32 service is effected upon the person so designated in the  
33 registration statement a copy of the process shall, in addition,  
34 be mailed to the charitable organization or professional fund  
35 raiser at its last known address;

36 (b) When a charitable organization or professional fund  
37 raiser has solicited contributions in this state, but maintains  
38 no office within the state, has no registered agent within the  
39 state, and no designated person having custody of its books and  
40 records within the state, or when a registered agent or person  
41 having custody of its books and records within the state cannot  
42 be found as shown by the return of the sheriff of the county in  
43 which such registered agent or person having custody of books  
44 and records has been represented by the charitable organization  
45 or professional fund raiser as maintaining an office, service  
46 may be made by leaving a copy of the process in the office of  
47 the commissioner. Service upon the commissioner is not  
48 effective unless (a) the plaintiff, who may be the commissioner  
49 in a suit, action, or proceeding instituted by ~~him~~ the \*  
50 commissioner, forthwith sends notice of the service and a copy \*  
51 of the process by certified mail to the defendant or respondent \*  
52 at ~~his~~ that person's last known address or takes other steps \*  
53 which are reasonably calculated to give actual notice, and (b)  
54 the plaintiff's affidavit of compliance with this subdivision is  
55 filed in the case on or before the return day of the process, if  
56 any, or within a further time the court allows.

57 No change for subd 2

309\*#59S

58 309.59 CONSTRUCTION; POWERS OF ATTORNEY GENERAL.

59 Sections 309.50 to 309.61 shall not be construed to limit  
60 or to restrict the exercise of the powers or the performance of  
61 the duties of the attorney general which ~~he~~ the attorney general \*  
62 otherwise is authorized to exercise or perform under any other  
63 provision of law.

309\*#68S

64 309.68 RELEASE OF RESTRICTIONS ON USE OR INVESTMENT.

65 No change for subd 1

66 Subd. 2. If written consent of the donor cannot be \*  
67 obtained by reason of ~~his~~ death, disability, unavailability, or  
68 impossibility of identification, the governing board may apply  
69 in the name of the institution to the district court for release  
70 of a restriction imposed by the applicable gift instrument on  
71 the use or investment of an institutional fund. The attorney  
72 general shall be notified of the application and shall be given

1 an opportunity to be heard. If the court finds that the  
 2 restriction is obsolete, inappropriate, or impracticable, it may  
 3 by order release the restriction in whole or in part. A release  
 4 under this subsection may not change an endowment fund to a fund  
 5 that is not an endowment fund.

6 No change for subd 3 to 4

315\*#07S

7 315.07 VOTERS, QUALIFICATIONS.

8 No member of the church, congregation, or society may vote  
 9 at an election after its incorporation until ~~he-or-she~~ the  
 10 member has attended public worship in the church, congregation,  
 11 or society for at least six months before the election, and  
 12 contributed to its support according to its customs. The clerk  
 13 of the trustees shall keep a register of all persons who ask to  
 14 join the church, congregation, or society note the time of the  
 15 request, and attend subsequent elections to test the  
 16 qualifications of voters in case of question.

\*  
 \*

315\*#16S

17 315.16 DIOCESAN CORPORATIONS; FORMATION; POWERS.

18 No change for subd 1

19 Subd. 2. TERM OF MEMBERSHIP. The persons who hold  
 20 the offices, respectively, of bishop, vicar general, and  
 21 chancellor of the religious denomination in the diocese, and  
 22 their successors in office are members of the corporation. On  
 23 ceasing to hold office the corporate membership of each at once  
 24 ends. The other two incorporators and their successors in  
 25 office must always be selected and appointed by the bishop,  
 26 vicar general, and chancellor of the diocese, or a majority of  
 27 them, for the same term and in the same manner as provided in  
 28 section 315.15 for the selection and appointment of the two lay  
 29 members by the bishop, vicar general, and pastor. Vacancies  
 30 must be filled by the three first named incorporators. An  
 31 appointment must be in writing and entered of record in the  
 32 minutes of the corporation, and appointees must be members of  
 33 the religious denomination and residents of the diocese of its  
 34 location. Any incorporator selected may at any time resign.  
 35 The resignation and its acceptance must be entered on the  
 36 minutes of the corporation. In case of a vacancy in the office  
 37 of bishop of the diocese or the temporary suspension of ~~his-or~~  
 38 ~~her~~ the bishop's authority to act, the relevant provisions of  
 39 section 315.15 apply.

\*  
 \*

40 No change for subd 3 to 4

315\*#36S

41 315.36 MEETINGS; NOTICE; ORGANIZATION; POWERS.

42 After each society has adopted the resolution, notice must  
 43 be given stating the time and place of the meeting of the united  
 44 congregation of the societies. The notice must be posted where  
 45 each society stately meets for worship at least 15 days before  
 46 the meeting. The minister or another officer of the  
 47 organization shall give public notice of the meeting at the  
 48 usual Sabbath service at least one week before the meeting. The  
 49 notice for the meeting must be signed by the clerk of the board  
 50 of trustees, vestry, or chapter of each church, or by a person  
 51 authorized by the board to sign it. At the meeting of the  
 52 united congregation, held according to the notice, a name must  
 53 be adopted for the new corporation. The meeting shall, by a  
 54 majority vote, determine the form of organization of the new  
 55 corporation and fix the qualifications for trustees or vestry  
 56 members and the number, which must be at least three and not  
 57 more than 12. A new board of trustees, vestry and wardens or  
 58 chapter and wardens must be elected by a majority of the members  
 59 present.

60 The board of trustees, vestry or chapter not including  
 61 wardens must be divided into three classes. One class must be  
 62 elected and hold office until the next annual meeting of the  
 63 congregation, one class until its second annual meeting, and one  
 64 class until its third annual meeting. After that, the terms of  
 65 office of the trustees or vestry members must be three years and  
 66 until their successors are elected and have qualified. If a  
 67 vacancy occurs in the board of trustees, vestry, or chapter, at  
 68 the next meeting of the congregation, board of trustees, chapter  
 69 or vestry a successor must be elected to fill the unexpired term.

70 After the meeting the chairman chair and secretary shall  
 71 make a certificate as prescribed by section 315.01, 315.17, or  
 72 315.20, as the case may be. The certificate, proof by affidavit  
 73 of proper notice of the meeting, and the affidavits provided for

\*

1 in section 315.35 must be recorded with the county recorder of  
 2 the county where the place of worship of the consolidated  
 3 society is located. When it is filed, the societies become  
 4 merged into a new corporation under the name specified in the  
 5 certificate. The new corporation has the rights, powers, and  
 6 privileges, and is liable for the obligations of the  
 7 corporations consolidated. The property of the original  
 8 corporation vests in the new corporation. If a will or other  
 9 instrument takes effect after the consolidation and names any of  
 10 the original corporations as a legatee, devisee, or beneficiary  
 11 of a trust, the new corporation shall take under the instrument  
 12 and is entitled to the money, property, and benefits that the  
 13 original corporation would have received under the instrument,  
 14 unless the instrument expressly provides otherwise.

315\*#40S

15 315.40 EMPLOYEE BENEFITS.

16 A religious society, religious association, or religious  
 17 corporation may, when authorized by its members, support and pay  
 18 benefits to its ministers, teachers, and other employees, or  
 19 those of a congregation or educational, benevolent, charitable,  
 20 or other body affiliated with it or under its jurisdiction; pay  
 21 benefits to their widows surviving spouse, children, or other \*  
 22 dependents or beneficiaries; collect contributions and other  
 23 payments; and create, invest, manage, and disburse necessary  
 24 endowment, reserve, and other funds for these purposes.

25 The insurance laws of this state do not apply to the  
 26 operations of a society, association or corporation under this  
 27 section.

316\*#03S

28 316.03 POWER OF COURT OVER CORPORATION OFFICERS.

29 In any case affecting a corporation the district court may:

30 (1) Require any officer thereof to account for ~~his~~ official \*  
 31 conduct in the management and disposition of any funds or  
 32 property of the corporation at any time in ~~his~~ the officer's \*  
 33 charge or possession;

34 (2) Compel any such officer to pay to such corporation or  
 35 to its representative all funds, and the value of all property  
 36 acquired and held, or transferred to others, or lost, wasted, or  
 37 damaged in violation of official duty;

38 (3) Suspend any such officer whenever it appears that he \*  
 39 ~~has violated his~~ a violation of the officer's trust has occurred; \*

40 (4) Remove any such officer upon conviction or satisfactory  
 41 proof of gross misconduct;

42 (5) Cause an election to be held to fill any vacancy  
 43 created by such removal, when deemed necessary, in which case it  
 44 shall appoint a disinterested person to conduct the same under  
 45 its direction, and, in case of suspension or removal of a  
 46 majority of the managing board, it may appoint a temporary  
 47 receiver to act until such suspension shall terminate, in the  
 48 one case, and, in the other, until the vacancies shall have been  
 49 filled by new officers duly elected and qualifying;

50 (6) Set aside any unauthorized or unlawful alienation of  
 51 property made by any officer thereof whenever satisfied that the  
 52 alienee knew or had reasonable cause to believe that such  
 53 conveyance was unauthorized or illegal;

54 (7) Restrain and prevent any such alienation, threatened or  
 55 intended; and

56 (8) Cause a meeting of its managing board, stockholders, or  
 57 members to be held when deemed necessary for the preservation of  
 58 its property or protection of its interests.

59 Nothing in this section contained shall be construed to  
 60 impair any visitorial power or authority over any corporation  
 61 vested by law in any corporate body or public officer.

316\*#05S

62 316.05 SEQUESTRATION; RECEIVER; DISTRIBUTION.

63 Upon complaint of a person obtaining judgment against a \*  
 64 corporation, or ~~his~~ the person's representatives, made after the  
 65 return unsatisfied of an execution issued thereon, the court may  
 66 sequester the stock, property, things in action, and effects  
 67 of such corporation and appoint a receiver of the same; and,  
 68 upon final judgment upon any such complaint, the court shall  
 69 order the property remaining, or the proceeds thereof, to be  
 70 disposed of under its direction, proportionately, in the  
 71 following order:

72 (1) In payment of the costs and expenses of the  
 73 receivership;

1 (2) Debts due the United States and the state of Minnesota,  
2 if any;

3 (3) Taxes and assessments, if any;

4 (4) Claims duly proved and allowed of employees sustaining  
5 injury in the course of their employment and entitled to  
6 compensation under the provisions of the workers' compensation  
7 act; provided, that claims under this clause shall not be  
8 allowed if the corporation carried workers' compensation  
9 insurance, as provided by law, at the time the injury was  
10 sustained;

11 (5) Claims, including cash value of all compensation paid  
12 in any medium other than cash, duly proved and allowed of  
13 clerks, servants or laborers for services performed within three  
14 months preceding the appointment of the receiver, if any; and

15 (6) Other claims duly proved and allowed.

16 After payment of the expenses of receivership and claims of  
17 creditors duly proved, the remainder, if any there be, shall be  
18 distributed pro rata among the stockholders proving themselves  
19 entitled thereto.

316\*#10S

20 316.10 STATE INTERESTED, PROCEEDINGS.

21 Whenever, in any action or proceeding to dissolve a  
22 corporation, it shall appear at any stage of the proceedings  
23 that the state is, or is likely to be, interested therein, or  
24 that it is a matter of general public interest, the court shall  
25 order that a copy of the complaint or petition be served upon  
26 the attorney general in the manner of serving a summons in a  
27 civil action; and the attorney general shall intervene in any  
28 such proceeding when in ~~his~~ the attorney general's opinion the  
29 public interest requires it, whether so notified or not. \*

316\*#11S

30 316.11 RECEIVER, APPOINTMENT, DUTIES.

31 In any action or proceeding to dissolve a corporation, the  
32 court, at any time before judgment, or within three years after  
33 judgment, of dissolution, may appoint a receiver to take charge  
34 of its estate and effects and to collect the debts and property  
35 due and belonging to it, with power to prosecute and defend  
36 actions in its name or otherwise, to appoint agents ~~under-him~~, \*  
37 and do all other acts necessary to the final settlement of the  
38 unfinished business of the corporation which it might do if in  
39 being. The power of such receiver shall continue so long as the  
40 court deems necessary for such purposes. The receiver shall pay  
41 all debts due from the corporation, if the funds in ~~his-hands~~ \*  
42 hand are sufficient therefor; and, if not, shall distribute the \*  
43 same ratably among the creditors who prove their debts, in the  
44 manner directed by the court; and, if there be any balance after  
45 the payment of the debts, ~~he~~ the receiver shall distribute and \*  
46 pay the same to and among those who are justly entitled thereto,  
47 as having been stockholders or members. Every receiver  
48 appointed under the provisions of this section shall give bond  
49 in such amount as the court shall require, with sureties  
50 approved by it.

316\*#13S

51 316.13 FORFEITURE OF CHARTER; RECEIVER; SUIT BY CREDITOR.

52 Such injunction may be issued on the complaint of the  
53 attorney general in behalf of the state, or of any creditor or  
54 stockholder of the corporation. When it issues against a bank  
55 for any violation of its charter, on complaint of a creditor,  
56 the court shall proceed to final judgment, and, if the proof be  
57 sufficient, adjudge a forfeiture, notwithstanding such creditor  
58 may settle with the corporation and relinquish ~~his a~~ claim \*  
59 against it. In such cases the attorney general or a creditor  
60 may appear and prosecute the action, which shall not be  
61 discontinued if either of them so appears and prosecutes the  
62 same. At any stage of the proceedings the court may appoint one  
63 or more receivers to take charge of the property and effects of  
64 such corporation. If the injunction be upon application of a  
65 creditor of a corporation whose directors or stockholders are  
66 liable by law for the payment of such debts in any event or  
67 contingency, such directors or stockholders, or any of them, may  
68 be made parties to the action, either at the time of filing the  
69 complaint or at any subsequent time when it becomes necessary to  
70 enforce such liability.

316\*#14S

71 316.14 UNPAID STOCK SUBSCRIPTION.

72 When the property of any corporation is insufficient to pay

1 its debts, upon application of a creditor the court shall order  
 2 the payment by such stockholder of the amount, if any, unpaid on  
 3 the shares held by him, or such portion thereof as may be  
 4 necessary to satisfy the corporate debts, and when necessary may  
 5 direct the receiver to enforce such order by appropriate  
 6 proceedings; and, on application of a stockholder, the court may  
 7 make such order as will equalize the payments made by  
 8 stockholders for their stock, and in like manner the court may  
 9 enforce any liability of directors and officers.

316\*#17S

10 316.17 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING;  
11 NOTICE OF.

12 When it shall be made to appear by the petition of a  
 13 receiver or assignee of a corporation, or of any creditor  
 14 thereof whose claim has been filed, that any constitutional,  
 15 statutory, or other liability of stockholders or directors, or  
 16 both, exists, and that it is necessary to resort to the same,  
 17 the court shall appoint a time for hearing, not less than 30 nor  
 18 more than 60 days thereafter, and order such notice thereof to  
 19 be served on each person against whom such liability is claimed  
 20 in the same manner a summons is served in a civil action, and  
 21 said notice shall also be published as the court shall order.  
 22 Such notice shall specify, in a general way, the nature of the  
 23 liability claimed in the petition and the amount thereof against  
 24 the person upon whom it is so served. When the receiver is not  
 25 the petitioner, personal notice shall be given to ~~him~~ the  
 26 receiver.

316\*#19S

27 316.19 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING;  
28 ORDER.

29 Such order shall authorize and direct the assignee or  
 30 receiver to collect the amount so assessed, and, on failure of  
 31 any one liable to such assessment to pay the same within the  
 32 time prescribed, to prosecute an action against ~~him~~ the  
 33 nonpayer, whether resident or non-resident, and wherever found.  
 34 Such order shall be conclusive as to all matters relating to the  
 35 amount, propriety, and necessity of the assessment, against such  
 36 parties as shall have been served with notice of the receiver's  
 37 petition for assessment, as provided in section 316.17, except  
 38 that the defense of ultra vires set forth in section 316.18 may  
 39 be interposed by any stockholder in any suit for any such  
 40 assessment and if maintained shall diminish the liability of  
 41 such stockholder in the proportion that the liabilities  
 42 determined to be ultra vires shall bear to the total liabilities  
 43 of such corporation.

316\*#20S

44 316.20 ACTION FOR ASSESSMENTS.

45 Upon expiration of the time specified in the order for the  
 46 payment of assessments, the assignee or receiver shall commence  
 47 action against every party so assessed and failing to pay,  
 48 wherever ~~he~~ the nonpayer or any property subject to process in  
 49 such action is found, unless ~~he~~ the assignee or receiver shall  
 50 report to the court ~~that he believes a belief that~~ such  
 51 stockholder ~~to~~ be insolvent, or that the expenses of the  
 52 prosecution will probably exceed the amount likely to be  
 53 collected, in which case the court, unless satisfied to the  
 54 contrary, shall order action suspended as to such party;  
 55 provided, that no action shall be commenced to collect the  
 56 amount of any such assessment unless commenced within two years  
 57 after the insolvency of the corporation and the appointment of a  
 58 receiver or assignee.

316\*#22S

59 316.22 PROCEEDINGS ON FAILURE OF ASSIGNEE OR RECEIVER TO  
60 PROSECUTE.

61 If the assignee or receiver shall neglect to begin an  
 62 action against any stockholder who has failed to pay ~~his~~ an  
 63 assessment, and is not excepted from the present operation of  
 64 such order, or to diligently prosecute the same, any stockholder  
 65 who has paid ~~his~~ an assessment in full, or any creditor, may  
 66 petition the court to order such assignee or receiver to  
 67 prosecute such action against such delinquent stockholder, or to  
 68 permit such petitioner to begin and maintain or to continue any  
 69 such action already begun, in the name of such assignee or  
 70 receiver, for the benefit of such estate; and, if the petitioner  
 71 shall furnish such security for costs and expenses as the court  
 72 may direct, it shall either require the assignee or receiver to

1 prosecute such action forthwith, or permit the petitioner to  
2 begin and prosecute, or continue the prosecution of the same.

316\*#23S

3 316.23 SURPLUS TO BE DIVIDED AMONG STOCKHOLDERS.

4 When, after the payment of all expenses of such assignment  
5 or receivership and all indebtedness of and claims allowed  
6 against such corporation, any surplus money or property remains  
7 in the hands of the assignee or receiver, the same shall be  
8 equitably distributed, under the direction of the court, among  
9 the stockholders who have paid their assessments. Any  
10 stockholder who has paid his assessments, in addition to any \*  
11 remedy herein provided, shall be entitled to enforce  
12 contribution from any stockholder who has not paid such  
13 assessments, and, for that purpose, shall be subrogated to the  
14 rights of the creditors or assignee or receiver of such  
15 corporation against every such delinquent stockholder, in such  
16 manner and to such extent as may be just and equitable.

317\*#15S

17 317.15 BYLAWS.

18 No change for subd 1

19 Subd. 2. ADOPTION, ALTERATION. Except as provided  
20 in section 317.14 for the initial bylaws, and except as provided  
21 in clause (4), bylaws shall be adopted or amended in the manner  
22 provided in clauses (1) to (3).

23 (1) PROCEDURE TO AMEND, BY MEMBERS, WHERE THERE ARE  
24 MEMBERS WITH VOTING RIGHTS. The procedure to amend, by  
25 members, where there are members with voting rights shall be:  
26 (a) the board of directors may propose the amendment to the  
27 bylaws by resolution setting forth the proposed amendment and  
28 directing that it be submitted for adoption at a meeting of the  
29 members; or (b) any five members may set forth a proposed  
30 amendment by petition by them subscribed, which petition shall  
31 be filed with the secretary of the corporation. Notice of the  
32 meeting of the members, stating the purpose including the  
33 proposed amendment, shall be given to each member entitled to  
34 vote on the proposed amendment, and to each officer and director  
35 regardless of his voting rights. If notice required by this \*  
36 clause has been given, the proposed amendment may be adopted at  
37 any meeting of members. Unless the articles or bylaws require a  
38 greater vote, when a majority of the members voting have  
39 approved a proposed amendment, it is adopted.

40 (2) PROCEDURE TO AMEND, BY DIRECTORS, WHERE MEMBERS HAVE  
41 VOTING RIGHTS. The procedure to amend by directors where  
42 members have voting rights shall be the same as prescribed in  
43 section 317.27, subdivision 3, for amendment of articles.

44 (3) PROCEDURE TO AMEND, WHERE THERE ARE NO MEMBERS WITH  
45 VOTING RIGHTS. Where there are no members with voting  
46 rights, the procedure to amend shall be as prescribed in section  
47 317.27, subdivision 4, for amendment of articles.

48 (4) CERTAIN AMENDMENTS. An amendment to bylaws of  
49 religious, charitable, or educational corporations shall be  
50 valid if made in accordance with the laws, usages, and customs  
51 of a superior body with which such corporation is affiliated,  
52 provided such laws, usages and customs are not less restricted  
53 than those provided in clauses (1) to (3).

317\*#20S

54 317.20 DIRECTORS.

55 No change for subd 1 to 2

56 Subd. 3. TERM OF OFFICE. A director shall hold  
57 office for the term for which he the director has been selected \*  
58 and until his a successor has been selected and has qualified, \*  
59 or until ~~he-has-been~~ removed under subdivision 10. \*

60 No change for subd 4 to 5

61 Subd. 6. EXTENT OF DUTIES. Directors shall  
62 discharge their duties in good faith, and with that diligence  
63 and care which an ordinarily prudent man person in a like \*  
64 position would exercise under similar circumstances.

65 No change for subd 7

66 Subd. 8. MEETINGS OF BOARD. Except where the  
67 articles or bylaws prescribe otherwise:

68 (1) a meeting of the board of directors may be held at any  
69 place, within or without this state, designated by the board;

70 (2) notice of every meeting shall be given;

71 (3) an act of the majority of the directors present at a  
72 meeting at which a quorum is present is the act of the board;

73 (4) (a) A conference among directors, or among members of

1 any committee designated by the board of directors, by any means  
 2 of communication through which the participants may  
 3 simultaneously hear each other during the conference,  
 4 constitutes a meeting of the board, or the committee, if the  
 5 same notice is given of the conference as would be required for  
 6 a meeting, and if the number of persons participating in the  
 7 conference would be sufficient to constitute a quorum at the  
 8 meeting. Participation in a meeting by that means constitutes  
 9 personal presence at the meeting;

10 (b) A director may participate in a meeting of the board,  
 11 or any committee designated by the board, not described in  
 12 paragraph (a) by any means of communication through which he the  
 13 director, other persons so participating, and all persons  
 14 physically present at the meeting may simultaneously hear each  
 15 other during the meeting. Participation in a meeting by that  
 16 means constitutes personal presence at the meeting.

17 Subd. 9. VACANCIES. Except where the articles or  
 18 bylaws prescribe otherwise, the remaining members of the board,  
 19 though less than a quorum, shall fill any vacancy occurring on  
 20 the board. A person so selected shall hold office until his a  
 21 successor has been selected.

22 Subd. 10. REMOVAL. (1) The articles or bylaws may  
 23 provide for the removal of a director or the entire board by a  
 24 method in addition to, or other than, the method provided in  
 25 clause (2).

26 (2) Except where the articles or bylaws prescribe  
 27 otherwise, and subject to clauses (1) and (3), the members, by a  
 28 majority vote of those entitled to vote at an election of  
 29 directors, may, with or without cause, remove a director or the  
 30 entire board from office. Neither a director nor the entire  
 31 board shall be removed from office unless the notice of the  
 32 annual or special meeting at which removal is to be considered  
 33 states such purpose. When the board or a director has been  
 34 removed, new directors may be elected at the same meeting.

35 (3) Where the members vote cumulatively under section  
 36 317.22, subdivision 7, clause (1), unless the entire board is  
 37 removed, a director shall not be removed if the number of votes  
 38 cast against his removal would be sufficient to elect him the  
 39 director if voted cumulatively.

40 No change for subd 11 to 12

41 Subd. 13. VOTING BY PROXY. A director shall not  
 42 appoint a personal proxy for-himself or vote by proxy.

317\*#21S

43 317.21 OFFICERS.

44 No change for subd 1 to 2

45 Subd. 3. REMOVAL. An officer may be removed, with  
 46 or without cause, by the persons authorized to elect or appoint  
 47 him the officer. His The removal is without prejudice to his  
 48 the officer's contract rights.

49 Subd. 4. AUTHORITY, DUTIES. (1) Officers have the  
 50 authority and duties in the management of the business of the  
 51 corporation that the articles or bylaws prescribe or, in the  
 52 absence of such prescription, as the board of directors  
 53 determines.

54 (2) An officer shall discharge his duties in good faith and  
 55 with the diligence and care which an ordinarily prudent man  
 56 person, in a like position and under similar circumstances,  
 57 would exercise.

58 (3) When authorized by the articles or bylaws, officers may  
 59 be ex officio members of the board of directors.

317\*#22S

60 317.22 MEETINGS OF MEMBERS.

61 No change for subd 1 to 5

62 Subd. 6. PROXIES. (1) Unless specifically  
 63 prohibited by the articles or bylaws, proxies are permitted at  
 64 all meetings.

65 (2) The appointment of a proxy shall be in writing filed at  
 66 or before the meeting with the person who has been designated to  
 67 act as secretary of the meeting.

68 (3) Except where the instrument of appointment prescribes  
 69 otherwise:

70 (a) the authority of a proxy ceases 11 months from the date  
 71 of appointment;

72 (b) an appointment of a proxy terminates all prior  
 73 appointments when the appointment has been filed with the  
 74 secretary of the meeting;

1 (c) when a member appoints two or more persons to act as  
 2 proxies, a majority of ~~his~~ the member's proxies present at the \*  
 3 meeting have the entire authority conferred by the instrument;  
 4 when such proxies are equally divided upon the manner of voting  
 5 in a particular case, they share the votes equally; and if only  
 6 one proxy is present, ~~he~~ that proxy has the entire authority \*  
 7 conferred by the instrument.

8 (4) Authority of a proxy is not terminated by the death or  
 9 incapacity of the maker unless written notice of the fact of  
 10 death or incapacity is given to the corporation before the vote  
 11 has been cast or the authority otherwise exercised.

12 Subd. 7. VOTING. (1) Unless the articles or bylaws  
 13 preclude cumulative voting, or provide for cumulative voting  
 14 under different notice or procedure, when a member gives written  
 15 notice to the president or secretary, at least 24 hours before  
 16 the time when the meeting is actually held, for the election of  
 17 directors by the members, of ~~his~~ an intention to vote \*  
 18 cumulatively in that election, each member or shareholder may \*  
 19 multiply the number of votes to which ~~he~~ the member or \*  
 20 shareholder is entitled by the number of directors to be \*  
 21 elected, and may cast all such cumulative votes for one  
 22 candidate or distribute them among any two or more candidates.  
 23 Upon the convening of the meeting, the presiding officer shall  
 24 announce that such notice has been given.

25 (2) Except where otherwise prescribed in the articles or  
 26 bylaws, and also in the membership certificate, if any, or share  
 27 certificate, a member of a nonstock corporation has one vote,  
 28 and a shareholder of a capital stock corporation has one vote  
 29 for each share of stock standing in ~~his~~ the member's or \*  
 30 shareholder's name on the books of the corporation. \*

31 (3) Members may vote (a) by voice or ballot, or (b) when  
 32 authorized by the articles or bylaws, by mail or other  
 33 reasonable means.

34 (4) Where the articles or bylaws authorize members to vote  
 35 by mail, the notice shall be given as provided in this chapter.  
 36 The entire vote on any single issue, including the election of  
 37 directors, may be by mailed ballots if so stated in the notice.  
 38 Such a vote shall have all the effects of a vote taken at a  
 39 regular or special meeting, provided that at least 20 percent of  
 40 the membership so votes, unless otherwise provided in the  
 41 articles or bylaws.

42 Notwithstanding the other provisions of this subdivision,  
 43 if the articles or bylaws authorize voting by mail and do not  
 44 preclude cumulative voting, there may be cumulative voting by  
 45 mail for the election of directors only if either (a) the notice  
 46 of the meeting at which the election of directors is to occur  
 47 expressly informs the members that cumulative voting will be  
 48 permitted at the election, or (b) the articles or bylaws permit  
 49 cumulative voting by mail only if a member gives written notice  
 50 to the president or secretary at least 48 hours before the time  
 51 when the meeting is actually held for the election of directors  
 52 by the members of ~~his~~ an intention to vote cumulatively by mail \*  
 53 in that election.

54 (5) When a corporation is a member or owns shares in  
 55 another domestic or foreign corporation, it may vote through

56 (a) its president; or

57 (b) a proxy appointed by the president; or

58 (c) when its board of directors has authorized a person to  
 59 vote, through such person if ~~he~~ the person produces a certified \*  
 60 copy of the resolution.

61 No change for subd 8 to 10

62 Subd. 11. TELEPHONE CONFERENCE MEETINGS. (a) A  
 63 conference among members, or among members of any committee  
 64 designated by the members, by any means of communication through  
 65 which the participants may simultaneously hear each other during  
 66 the conference, constitutes a meeting of the members, or the  
 67 committee, if the same notice is given of the conference as  
 68 would be required for a meeting, and if the number of persons  
 69 participating in the conference would be sufficient to  
 70 constitute a quorum at the meeting. Participation in a meeting  
 71 by that means constitutes personal presence at the meeting.

72 (b) A member may participate in a meeting of the  
 73 membership, or any committee designated by the membership, not  
 74 described in paragraph (a) by any means of communication through  
 75 which ~~he~~ the member, other persons so participating, and all \*  
 76 persons physically present at the meeting may simultaneously



1 hear each other during the meeting. Participation in a meeting  
2 by that means constitutes personal presence at the meeting.

317\*#25S

3 317.25 MEMBERSHIP.

4 No change for subd 1 to 5

5 Subd. 6. RIGHTS NOT TRANSFERABLE. Except where the  
6 articles or bylaws provide otherwise,

7 (1) the right of a member to vote and his the member's \*  
8 interest in the corporation or its property ceases on the \*  
9 termination of his membership; and, \*

10 (2) a member may not voluntarily or involuntarily transfer ,  
11 his membership, certificate of membership, share of stock, or \*  
12 any right arising therefrom. \*

317\*#27S

13 317.27 AMENDMENT OF ARTICLES.

14 No change for subd 1

15 Subd. 2. PROCEDURE TO AMEND, BY MEMBERS, WHERE THERE  
16 ARE MEMBERS WITH VOTING RIGHTS. (1) Where there are members  
17 with voting rights, the board of directors shall propose the  
18 amendment to the articles by resolution setting forth the  
19 proposed amendment and directing that it be submitted for  
20 adoption at a meeting of the members. Notice of the meeting of  
21 members, stating the purpose, shall be given to each member  
22 entitled to vote on the proposed amendment, and to each officer  
23 and director regardless of his voting rights. \*

24 (2) If notice required by clause (1) has been given, the  
25 proposed amendment may be adopted at any meeting of the members.

26 (3) Unless the articles or bylaws require a greater vote,  
27 when a majority of the members voting have approved a proposed  
28 amendment, it is adopted.

29 No change for subd 3 to 6

317\*#28S

30 317.28 BOOKS AND RECORDS; FINANCIAL STATEMENT.

31 (1) A domestic corporation shall keep at its registered  
32 office correct and complete books of account and minutes of  
33 proceedings of meetings of (a) members, (b) board of directors,  
34 and (c) committees having any of the authority of the board of  
35 directors.

36 (2) A member, his or the member's agent or his attorney, \*  
37 may inspect all books and records for any proper purpose at any  
38 reasonable time. \*

39 (3) Upon request by a member, the domestic corporation  
40 shall furnish the member with a statement showing the financial  
41 result of all operations and transactions affecting income and  
42 surplus during its last annual accounting period and a balance  
43 sheet containing a summary of its assets and liabilities as of  
44 the closing date of such accounting period.

317\*#36S

45 317.36 AGREEMENT, FILING, RECORDING; CERTIFICATE ISSUED.

46 (1) Upon execution of the agreement of merger or  
47 consolidation, the agreement and required copies shall be  
48 delivered to the secretary of state-at-his state's office, \*  
49 accompanied by the fees prescribed by section 317.67. \*

50 (2) ~~If~~ The secretary of state finds, on finding that the \*  
51 agreement conforms to law, and the prescribed fees have been \*  
52 paid, he shall endorse his approval upon the agreement and each \*  
53 copy, file and record the original of the agreement in his the \*  
54 secretary of state's office, and issue a certificate of merger \*  
55 or a certificate of consolidation and incorporation, as  
56 appropriate. The secretary of state shall file and record a  
57 copy of the certificate ~~in-his-office--He~~ and shall return the \*  
58 remaining copies bearing the endorsement of his approval, \*  
59 together with the certificate of merger or the certificate of  
60 consolidation and incorporation, to the single corporation.

317\*#52S

61 317.52 ATTORNEY GENERAL MAY INTERVENE.

62 If at any stage of a proceeding to effect the voluntary  
63 dissolution of a corporation it appears that the state is, or is  
64 likely to be, interested therein, or that it is a matter of  
65 general public interest, or welfare, the court shall order that a  
66 copy of the petition be served upon the attorney general. When  
67 ~~in-his~~ of the opinion that the public interest or welfare \*  
68 requires it, the attorney general shall intervene in any such \*  
69 proceeding whether ~~he-has-been~~ served with a copy of the  
70 petition or not. \*

317\*#55S

1 317.55 LIQUIDATING RECEIVER; POWERS, DUTIES.  
2 No change for subd 1  
3 Subd. 2. POWERS. Subject to the approval of the  
4 court, the liquidating receiver may:  
5 (1) enforce, within or without the state, all causes of  
6 action which the creditors or members have against the officers,  
7 directors, members, or anyone else;  
8 (2) enforce, defend, compromise, compound, or settle claims  
9 in favor of or against the corporation upon whatever terms ~~he~~ \*  
10 the receiver deems just; \*

11 (3) marshal the assets of the corporation;  
12 (4) subject to subdivision 4, sell, convey, and dispose of  
13 all or part of the property and assets of the corporation, at  
14 either a public or a private sale;  
15 (5) appoint sub-agents, and do all acts reasonably  
16 necessary to effect the final settlement of the unfinished  
17 business of the corporation.  
18 No change for subd 3 to 4  
317\*#56S

19 317.56 CLAIMS; PRESENTATION, FAILURE TO PRESENT.  
20 No change for subd 1 to 4  
21 Subd. 5. CONTINGENT CLAIM, NOT DUE CLAIM; PRESENTATION.  
22 When ~~a creditor presents~~ presenting a contingent or not due \*  
23 claim, ~~he a creditor~~ shall state its particulars. The court \*  
24 shall require that adequate provision be made for payment of  
25 this contingent or not due claim when it becomes due. Except  
26 when this provision is made, when contingent or not due claims  
27 have been presented, the liquidating receiver may distribute the  
28 assets of the corporation only to the extent permitted by  
29 section 317.57, subdivision 1, clauses (1), (2), and (3).  
30 Subd. 6. INFORMATION REQUIRED IN CLAIM. When  
31 presented a claim shall (a) be itemized, (b) if secured, show  
32 the security, and (c) be verified by the affidavit of the  
33 claimant, ~~his~~ or the claimant's agent or attorney, which \*  
34 declares the balance due, that no uncredited payment of the  
35 claim has been made, and that there are no offsets to the claim  
36 known to the affiant.  
37 No change for subd 7  
317\*#61S

38 317.61 OMITTED ASSETS, TITLE IN RECEIVER.  
39 The liquidating receiver has title to property or assets of  
40 the corporation omitted from the winding up. ~~He~~ The receiver \*  
41 shall hold them for distribution to the persons entitled to them.  
317\*#62S

42 317.62 CORPORATE EXISTENCE, ACTION TO TERMINATE.  
43 Subdivision 1. ACTION BY ATTORNEY GENERAL. When The \*  
44 attorney general ~~finds~~, on finding that the public interest \*  
45 requires termination of the existence of a domestic corporation  
46 or purported domestic corporation and that one or more of the  
47 facts described in subdivision 2 exists, ~~he~~ shall, upon ~~his~~ the \*  
48 attorney general's own information or upon the complaint of a \*  
49 member of the corporation or of any other person, file a  
50 petition, in the district court of the county where the  
51 registered office of the corporation is located, setting out  
52 these findings and requesting an order that the corporate  
53 affairs be liquidated and the corporate existence terminated.  
54 Subd. 2. NECESSARY PREREQUISITES. The attorney \*  
55 general may act under subdivision 1 ~~when he finds~~ on finding \*  
56 that the corporation:  
57 (1) has liabilities and obligations exceeding the corporate  
58 assets; or  
59 (2) the period of corporate existence has ended without due  
60 extension; or  
61 (3) franchise was procured through fraud practiced upon the  
62 state; or  
63 (4) should not have been formed under this chapter; or  
64 (5) was formed without a substantial compliance with the  
65 provisions prescribed by this chapter as precedent or essential  
66 to incorporation; or  
67 (6) has continued to exceed or abuse the authority or  
68 powers conferred upon it by this chapter or by any other  
69 applicable statute; or  
70 (7) has violated a provision of a statute regulating  
71 corporations or any other provision of law; or  
72 (8) has done, or omitted to do, any act which amounts to a  
73 surrender of its corporate franchise; or

1 (9) has failed to exercise or has discontinued its  
 2 corporate privileges; or  
 3 (10) has abandoned the corporate enterprise; or  
 4 (11) has failed for a period of 90 days to pay any fees,  
 5 charges or penalties prescribed by this chapter; or  
 6 (12) has failed for a period of 30 days after effecting a  
 7 change of its registered office to file with the secretary of  
 8 state a statement of such change; or  
 9 (13) has answered falsely or failed to answer any  
 10 reasonable written interrogatory propounded by the secretary of  
 11 state, the attorney general, commissioner of human services,  
 12 commissioner of commerce, or the commissioner of revenue, to the  
 13 corporation, its officers or directors; or  
 14 (14) has solicited property and has failed to use it for  
 15 the purpose solicited; or  
 16 (15) has fraudulently used or solicited property.

17 Subd. 3. CORRECTION OF ACTS OR OMISSIONS, TIME. If  
 18 the facts set forth in the petition show an act which the  
 19 corporation has done, or omitted to do, and the act or omission  
 20 may be corrected by an amendment of the articles or bylaws or by  
 21 performance of or abstention from the act, the attorney general  
 22 shall afford the corporation 30 days in which to effect the  
 23 correction before ~~he files~~ filing the petition. \*

24 No change for subd 4 to 5

317\*#63S

25 317.63 VIOLATIONS OF SECTION 317.62 CERTIFIED TO  
 26 ATTORNEY GENERAL.

27 When the secretary of state, commissioner of human  
 28 services, commissioner of commerce, or commissioner of revenue  
 29 has information that a corporation has violated section 317.62,  
 30 he the official with information shall certify ~~that information~~ \*  
 31 it to the attorney general. \*

317\*#64S

32 317.64 CHAMBERS OF COMMERCE, BOARDS OF TRADE, EXCHANGES.

33 No change for subd 1

34 Subd. 2. ARBITRATION OF DIFFERENCES. A domestic  
 35 corporation, formed for some or all of the purposes set forth in  
 36 subdivision 1, has authority, through provisions in its articles  
 37 or bylaws, to arbitrate and adjust differences between (a) the  
 38 corporation and its members, (b) the members, and (c) a member  
 39 and a third person who has given written consent. This  
 40 authority includes the right to take testimony, render awards  
 41 and enforce an award by a fine or by a forfeiture of the  
 42 membership of a person or of ~~his~~ the person's other rights or \*  
 43 privileges.

44 No change for subd 3 to 8

317\*#65S

45 317.65 CORPORATIONS TO SECURE OR MAINTAIN HOMES FOR  
 46 DEPENDENT CHILDREN.

47 No change for subd 1 to 6

48 Subd. 7. EXPENSE REIMBURSEMENT. (1) Any  
 49 organization, association or society licensed by the department  
 50 of human services may receive payment for expenses related to  
 51 adoption services in an amount that fairly reflects the agency's  
 52 reasonable and necessary expenses of adoptive counseling,  
 53 whether or not legal adoption is completed; provision of  
 54 services to children prior to adoptive placement; and the  
 55 supervision of children in the home until legal adoption is  
 56 completed. Only that portion of the expenses may be requested  
 57 which the person seeking to adopt is financially able to meet.  
 58 No person shall be barred from receiving a child for adoption  
 59 because of inability to pay any part of the expenses referred to  
 60 in this subdivision. In addition to any other reports as may be  
 61 required, each licensed agency, shall file annually with the  
 62 commissioner of human services a full accounting of all expense  
 63 reimbursement received pursuant to this subdivision, together  
 64 with the record of the services given for which the  
 65 reimbursement was made. If ~~he~~ the person returns the child to \*  
 66 the corporation, the person shall not receive compensation for  
 67 the care, clothing, or medical attendance of the child.

68 This provision shall not preclude voluntary contributions  
 69 by any individual or organization at any time.

70 (2) No organization, association or society shall be  
 71 eligible to receive an expense reimbursement from a person who  
 72 takes a child into ~~his~~ the person's home or who adopts a child \*  
 73 in any amount whatsoever during the first twelve months that the

1 organization, association or society is licensed by the  
2 department of human services.

3 No change for subd 8

317\*#66S

4 317.66 CORPORATIONS FOR RELIGIOUS PURPOSES.

5 Subdivision 1. BENEFITS FOR MEMBERS. When duly  
6 authorized by its members or otherwise, a corporation formed for  
7 a religious purpose, may provide for:

8 (1) support and payment of benefits to its ministers,  
9 teachers, employees, or functionaries and to the ministers,  
10 teachers, employees, or functionaries of a nonprofit body  
11 affiliated with it or under its jurisdiction;

12 (2) payment of benefits to the widows surviving spouses, \*  
13 children, dependents, or other beneficiaries of the persons  
14 named in clause (1);

15 (3) collection of contributions and other payments; and,

16 (4) creation, maintenance, investment, management, and  
17 disbursement of necessary endowment, reserve, and other funds  
18 for these purposes.

19 No change for subd 2 to 4

318\*#02S

20 318.02 FILING DECLARATION OF TRUST; ISSUANCE OF  
21 CERTIFICATE; POWERS; LIABILITY.

22 Subdivision 1. The term "declaration of trust" as used in  
23 this section means the declaration of trust, business trust  
24 instrument, trust indenture, contract of custodianship, or other  
25 instrument pursuant to which such association is organized.  
26 Every such association organized after April 20, 1961, for the  
27 purpose of transacting business in this state shall, prior to  
28 transacting any business in this state, file in the office of  
29 the secretary of state a true and correct copy of the  
30 "declaration of trust" under which the association proposes to  
31 conduct its business, which copy shall be sworn to, as being a  
32 true and correct copy, by the chairman chair of the board of \*  
33 trustees of such association, or by one of the trustees of such  
34 association, or by one of the persons or parties to the  
35 "declaration of trust." The said sworn statement shall also  
36 contain a statement that the true and correct copy of the  
37 "declaration of trust" is being filed in the office of the  
38 secretary of state of the state of Minnesota pursuant to chapter  
39 318, and shall also include the full name and street address of  
40 an agent of the business trust in this state. That agent shall  
41 be the agent for service of process which shall be made pursuant  
42 to the provisions of section 543.08. The "declaration of trust"  
43 may provide that the duration of such association shall be  
44 perpetual. Upon the filing of the copy of the "declaration of  
45 trust" and the payment of a filing fee of \$150 to the secretary  
46 of state, the secretary of state shall issue to such  
47 association, or to the trustees named in the said "declaration  
48 of trust," or to the persons or parties to the "declaration of  
49 trust," a certificate showing that such "declaration of trust"  
50 has been duly filed ~~in-his-office~~; whereupon, such association \*  
51 in its name shall be authorized to transact business in this  
52 state; provided that all other applicable laws have been  
53 complied with. The "declaration of trust" may be amended as  
54 provided in the "declaration of trust" or in any amendments  
55 thereto but a true and correct copy of all amendments to the  
56 "declaration of trust," which copy shall be sworn to in like  
57 manner as provided above in filing a true and correct copy of  
58 the "declaration of trust," shall be filed in the office of the  
59 secretary of state upon the payment of a filing fee of \$50 to  
60 the secretary of state and all amendments shall become effective  
61 at the time of said filing. When such copy of the "declaration  
62 of trust" and any amendments thereto shall have been filed in  
63 the office of the secretary of state it shall constitute public  
64 notice as to the purposes and manner of the business to be  
65 engaged in by such association.

66 No change for subd 2 to 4

319A#02S

67 319A.02 DEFINITIONS.

68 No change for subd 1

69 Subd. 2. "Professional service" means personal service  
70 rendered by a professional pursuant to a license or certificate  
71 issued ~~to-him~~ by the state of Minnesota to practice medicine and \*  
72 surgery pursuant to sections 147.01 to 147.29, chiropractic  
73 pursuant to sections 148.01 to 148.101, nursing pursuant to

1 sections 148.171 to 148.285, optometry pursuant to sections  
 2 148.52 to 148.62, psychology pursuant to sections 148.88 to  
 3 148.98, dentistry pursuant to sections 150A.01 to 150A.12,  
 4 pharmacy pursuant to sections 151.01 to 151.40, podiatry  
 5 pursuant to sections 153.01 to 153.15, veterinary medicine  
 6 pursuant to sections 156.001 to 156.14, architecture,  
 7 engineering, surveying and landscape architecture pursuant to  
 8 sections 326.02 to 326.15, accountancy pursuant to sections  
 9 326.17 to 326.23, or law pursuant to sections 481.01 to 481.17,  
 10 or pursuant to a license or certificate issued ~~to him~~ by another  
 11 state pursuant to similar laws. \*

12 No change for subd 3 to 6

319A#10S

13 319A.10 RELATIONSHIP TO PERSON SERVED.

14 Sections 319A.01 to 319A.22 do not alter any law applicable  
 15 to the relationship between a person furnishing professional  
 16 service and a person receiving the professional service,  
 17 including liability arising out of the professional service and  
 18 the confidential relationship and privilege of communications  
 19 between the person rendering professional service and the person  
 20 receiving the professional service; provided, however, that no  
 21 person is personally liable in tort for any act ~~in which he has~~  
 22 not personally participated in. No director, officer, or  
 23 employee of a professional corporation or foreign professional  
 24 corporation is personally liable in contract for any contract  
 25 ~~which he executes~~ executed on behalf of the corporation within  
 26 the limits of ~~his~~ the executor's actual authority. \*

319A#12S

27 319A.12 CHANGES IN CORPORATE STATUS.

28 Subdivision 1. A professional corporation or foreign  
 29 professional corporation shall report to the board having  
 30 jurisdiction of the professional service which the corporation  
 31 is authorized to render the death of any of its shareholders or  
 32 members within 30 days of such death. Within 90 days following  
 33 the date of death of a shareholder of a professional corporation  
 34 or the loss of ~~his~~ a license to render professional service, all  
 35 of the shares of stock owned by such shareholder or ~~his~~ the  
 36 member's membership shall be transferred to and acquired by the  
 37 professional corporation or persons qualified to own such shares  
 38 of stock or membership. If the articles of incorporation,  
 39 bylaws, or a written agreement of the shareholders of a  
 40 professional corporation fail to state a price or a method of  
 41 determining a price at which the corporation or its shareholders  
 42 may purchase the shares of stock or membership of a deceased  
 43 shareholder or a shareholder no longer qualified to own shares  
 44 of stock in the corporation or membership, then the price for  
 45 the shares of stock or membership shall be the fair market value  
 46 as determined by the board of directors but not less than the  
 47 book value as of the end of the month immediately preceding the  
 48 death or disqualification of the shareholder or member. Book  
 49 value shall be determined from the books and records of the  
 50 corporation in accordance with its regular method of accounting.  
 51 No change for subd 1a

51 No change for subd 1a

52 Subd. 2. If within 90 days following the date of death of  
 53 a shareholder or member of a professional corporation or the  
 54 loss of ~~his~~ a license to render professional service all of the  
 55 shares or membership owned by the deceased or disqualified  
 56 shareholder or member have not been transferred to and acquired  
 57 by the corporation or persons qualified to own the shares or  
 58 membership, the corporation shall thereafter be governed solely  
 59 by the provisions of sections 301.01 to 301.67, chapter 302A, or  
 60 chapter 317 and shall not enjoy any of the powers and privileges  
 61 conferred by sections 319A.01 to 319A.22. When the corporation  
 62 ceases to be authorized to render professional service, its  
 63 corporate name must be changed to comply with the corporate name  
 64 provision of sections 301.01 to 301.67, chapter 302A, or chapter  
 65 317, and any words, phrases or abbreviations contained therein  
 66 to comply with the provisions of sections 319A.01 to 319A.22  
 67 shall be eliminated. \*

68 No change for subd 3

322\*#02S

69 322.02 FORMATION.

70 Two or more persons desiring to form a limited partnership  
 71 shall:

72 (1) Sign and acknowledge or swear to a certificate, which  
 73 shall state:

- 1 (a) The name of the partnership;  
 2 (b) The character of the business;  
 3 (c) The location of the principal place of business;  
 4 (d) The name and place of residence of each member; general  
 5 and limited partners being, respectively designated;  
 6 (e) The term for which the partnership is to exist;  
 7 (f) The amount of cash and a description of and the agreed  
 8 value of the other property contributed by each limited partner;  
 9 (g) The additional contributions, if any, agreed to be made  
 10 by each limited partner and the times at which or events on the  
 11 happening of which they shall be made;  
 12 (h) The time, if agreed upon, when the contribution of each  
 13 limited partner is to be returned;  
 14 (i) The share of the profits or the other compensation by  
 15 way of income which each limited partner shall receive by reason  
 16 of ~~his~~ that partner's contribution; \*  
 17 (j) The right, if given, of a limited partner to substitute \*  
 18 an assignee as contributor in ~~his~~ that partner's place, and the  
 19 terms and conditions of the substitution;  
 20 (k) The right, if given, of the partners to admit  
 21 additional limited partners;  
 22 (l) The right, if given, of one or more of the limited  
 23 partners to priority over other limited partners, as to  
 24 contributions or as to compensation by the way of income, and  
 25 the nature of such priority;  
 26 (m) The right, if given, of the remaining general partner  
 27 or partners to continue the business on the death, retirement,  
 28 or insanity of a general partner; and  
 29 (n) The right, if given, of a limited partner to demand and  
 30 receive property other than cash in return for ~~his~~ that  
 31 partner's contribution; and \*  
 32 (2) File for record the certificate in the office of the \*  
 33 county recorder of the county where the principal place of  
 34 business is situated.

35 A limited partnership is formed if there has been  
 36 substantial compliance in good faith with the requirements of  
 37 this section.

## 322\*#05S

38 322.05 NAME NOT TO CONTAIN SURNAME OF LIMITED PARTNER.

39 The surname of a limited partner shall not appear in the  
 40 partnership name, unless:

- 41 (1) It is also the surname of a general partner; or  
 42 (2) Prior to the time when the limited partner became such  
 43 the business had been carried on under a name in which ~~his~~ that  
 44 partner's surname appeared. \*

45 A limited partner whose name appears in a partnership name  
 46 contrary to the provisions of this section is liable as a  
 47 general partner to partnership creditors who extend credit to  
 48 the partnership without actual knowledge that ~~he~~ the limited  
 49 partner is not a general partner. \*

## 322\*#06S

50 322.06 LIABILITY FOR FALSE STATEMENTS IN CERTIFICATE.

51 If the certificate contains a false statement, one who  
 52 suffers loss by reliance on such statement may hold liable any  
 53 party to the certificate who knew the statement to be false

- 54 (1) At the time ~~he signed~~ of signing the certificate, or \*  
 55 (2) Subsequently, but within a sufficient time before the \*  
 56 statement was relied upon to enable ~~him~~ the signer to cancel or  
 57 amend the certificate, or to file a petition for its cancellation  
 58 or amendment, as provided in section 322.25, subdivision 3.

## 322\*#07S

59 322.07 LIMITED PARTNER NOT LIABLE TO CREDITORS.

60 A limited partner shall not become liable as a general  
 61 partner ~~unless, without taking part in the control of the~~ \*  
 62 business in addition to ~~the-exercise-of-his~~ exercising rights \*  
 63 and powers as a limited partner, ~~he-takes-part-in-the-control-of~~ \*  
 64 the-business. \*

## 322\*#10S

65 322.10 RIGHTS OF A LIMITED PARTNER.

66 A limited partner shall have the same rights as a general  
 67 partner to

- 68 (1) Have the partnership books kept at the principal place  
 69 of business of the partnership, and at all times to inspect and  
 70 copy any of them;  
 71 (2) Have on demand full and true information of all things  
 72 affecting the partnership, and a formal account of the

1 partnership affairs whenever circumstances render it just and  
2 reasonable; and

3 (3) Have a dissolution and winding up by decree of court.

4 A limited partner shall have the right to receive a share  
5 of the profits or other compensation by way of income, and to  
6 the return of ~~his~~ that partner's contribution as provided in  
7 sections 322.15 and 322.16. \*

## 322\*#11S

8 322.11 STATUS OF PERSON ERRONEOUSLY BELIEVING HIMSELF TO  
9 BE A LIMITED PARTNER. \*

10 ~~A person who has contributed~~ A contributor to the capital  
11 of a business conducted by a person or partnership erroneously  
12 believing that ~~he~~ the contributor has become a limited partner  
13 in a limited partnership is not, by reason of ~~his~~ the exercise  
14 of the rights of a limited partnership, a general partner with  
15 the person or in the partnership carrying on the business, or  
16 bound by the obligations of such person or partnership;  
17 provided, that, on ascertaining the mistake, ~~he~~ the contributor  
18 promptly renounces ~~his~~ interest in the profits of the business,  
19 or other compensation by way of income. \*

## 322\*#12S

20 322.12 ONE PERSON BOTH GENERAL AND LIMITED PARTNER.

21 A person may be a general and a limited partner in the same  
22 partnership at the same time.

23 A person who is a general, and also at the same time a  
24 limited, partner shall have all the rights and powers and be  
25 subject to all the restrictions of a general partner; except  
26 that, in respect to ~~his~~ contribution, ~~he~~ the person shall have  
27 the rights against the other members ~~which he would have had as~~  
28 if ~~he~~ the person were not also a general partner. \*

## 322\*#13S

29 322.13 LOANS AND OTHER BUSINESS TRANSACTIONS WITH  
30 LIMITED PARTNER.

31 A limited partner also may loan money to and transact other  
32 business with the partnership, and, unless ~~he is~~ also a general  
33 partner, receive on account of resulting claims against the  
34 partnership, with general creditors, a pro rata share of the  
35 assets. No limited partner shall, in respect to any such claim,  
36

(1) Receive or hold as collateral security any partnership  
37 property, or

(2) Receive from a general partner or the partnership any  
38 payment, conveyance, or release from liability, if at the time  
39 the assets of the partnership are not sufficient to discharge  
40 partnership liabilities to persons not claiming as general or  
41 limited partners.

42  
43 The receiving of collateral security, or a payment,  
44 conveyance, or release, in violation of the provisions of this  
45 section, is a fraud on the creditors of the partnership. \*

## 322\*#16S

46 322.16 WITHDRAWAL OR REDUCTION OF LIMITED PARTNER'S  
47 CONTRIBUTION.

48 Subdivision 1. RETURN OF CONTRIBUTION. A limited  
49 partner shall not receive from a general partner or out of  
50 partnership property any part of ~~his~~ contribution until \*

51 (1) All liabilities of the partnership, except liabilities  
52 to general partners and to limited partners on account of their  
53 contributions, have been paid or there remains property of the  
54 partnership sufficient to pay them;

55 (2) The consent of all members is had, unless the return of  
56 the contribution may be rightfully demanded under the provisions  
57 of subdivision 2; and

58 (3) The certificate is canceled or so amended as to set  
59 forth the withdrawal or reduction.

60 Subd. 2. DEMAND. Subject to the provisions of  
61 subdivision 1, a limited partner may rightfully demand the  
62 return of ~~his~~ contribution \*

63 (1) On the dissolution of a partnership, or

64 (2) When the date specified in the certificate for its  
65 return has arrived, or

66 (3) After ~~he has given~~ giving six months' notice, in  
67 writing, to all other members, if no time is specified in the  
68 certificate either for the return of the contribution or for the  
69 dissolution of the partnership. \*

70 Subd. 3. CASH RECEIVED IN RETURN FOR CONTRIBUTION.

71 In the absence of any statement in the certificate to the  
72 contrary or the consent of all members, a limited partner,

1 irrespective of the nature of ~~his~~ contribution, has only the \*  
 2 right to demand and receive cash in return for ~~his~~ contribution. \*  
 3 Subd. 4. RIGHT TO DISSOLUTION. A limited partner  
 4 may have the partnership dissolved and its affairs wound up ~~when~~ \*  
 5 (1) He upon rightfully but unsuccessfully demands demanding \*  
 6 the return of ~~his~~ contribution, or \*  
 7 (2) when the other liabilities of the partnership have not \*  
 8 been paid, or the partnership property is insufficient for their \*  
 9 payment, as required by subdivision 1, clause (1), and the \*  
 10 limited partner would otherwise be entitled to the return of ~~his~~ \*  
 11 contribution. \*

## 322\*#17S

12 322.17 LIABILITY OF LIMITED PARTNER TO PARTNERSHIP.  
 13 Subdivision 1. LIABILITY. A limited partner is  
 14 liable to the partnership  
 15 (1) For the difference between ~~his~~ contribution as actually \*  
 16 made and that stated in the certificate as having been made, and \*  
 17 (2) For any unpaid contribution which ~~he~~ the limited \*  
 18 partner agreed in the certificate to make in the future at the \*  
 19 time and on the conditions stated in the certificate. \*  
 20 Subd. 2. HOLDING AS TRUSTEE. A limited partner  
 21 holds as trustee for the partnership  
 22 (1) Specific property stated in the certificate as  
 23 contributed by ~~him~~ that partner but which was not contributed or \*  
 24 which has been wrongfully returned, and \*  
 25 (2) Money or other property wrongfully paid or conveyed to \*  
 26 ~~him~~ that partner on account of ~~his~~ a contribution. \*  
 27 No change for subd 3  
 28 Subd. 4. DISCHARGE OF LIABILITIES. When a  
 29 contributor has rightfully received the return, in whole or in  
 30 part, of ~~the a~~ capital ~~of-his~~ contribution, ~~he~~ the contributor \*  
 31 is nevertheless liable to the partnership for any sum, not in \*  
 32 excess of such return with interest, necessary to discharge its \*  
 33 liabilities to all creditors who extended credit or whose claims  
 34 arose before such return. \*

## 322\*#19S

35 322.19 ASSIGNMENT OF LIMITED PARTNER'S INTEREST.  
 36 A limited partner's interest is assignable.  
 37 A substituted limited partner is a person admitted to all  
 38 the rights of a limited partner who has died or has assigned ~~his~~ \*  
 39 an interest in a partnership. \*  
 40 An assignee, who does not become a substituted limited  
 41 partner, has no right to require any information or account of  
 42 the partnership transactions or to inspect the partnership  
 43 books, ~~he~~, but, rather is only entitled to receive the share of \*  
 44 the profits or other compensation by way of income, or the \*  
 45 return of ~~his~~ a contribution, to which ~~his~~ the assignor would \*  
 46 otherwise be entitled.  
 47 An assignee shall have the right to become a substituted  
 48 limited partner if all the members, except the assignor, consent  
 49 thereto or if the assignor, being thereunto empowered by the  
 50 certificate, gives the assignee that right.  
 51 An assignee becomes a substituted limited partner when the  
 52 certificate is appropriately amended in accordance with section  
 53 322.25.  
 54 The substituted limited partner has all the rights and  
 55 powers, and is subject to all the restrictions and liabilities,  
 56 of ~~his~~ the assignor, except those liabilities of which ~~he~~ the \*  
 57 substitute was ignorant at the time ~~he-became~~ of becoming a \*  
 58 limited partner and which could not be ascertained from the  
 59 certificate.  
 60 The substitution of the assignee as a limited partner does  
 61 not release the assignor from liability to the partnership under  
 62 sections 322.06 and 322.17. \*

## 322\*#21S

63 322.21 DEATH OF LIMITED PARTNER.  
 64 On the death of a limited partner ~~his~~ the executor or \*  
 65 administrator shall have all the rights of a limited partner for \*  
 66 the purpose of settling ~~his~~ the estate, and such power as the \*  
 67 deceased had to constitute ~~his~~ an assignee a substituted limited \*  
 68 partner.  
 69 The estate of a deceased limited partner shall be liable  
 70 for all ~~his~~ the decedent's liabilities as limited partner. \*

## 322\*#22S

71 322.22 RIGHTS OF CREDITORS OF LIMITED PARTNER.  
 72 On due application to a court of competent jurisdiction by



1 any judgment creditor of a limited partner, the court may charge  
2 the interest of the indebted limited partner with payment of the  
3 unsatisfied amount of the judgment debt; and may appoint a  
4 receiver, and make all other orders, directions and inquiries  
5 which the circumstances of the case may require.

6 The interest may be redeemed with the separate property of  
7 any general partner, but may not be redeemed with partnership  
8 property.

9 The remedies conferred by this section shall not be deemed  
10 exclusive of others which may exist.

11 Nothing in this chapter shall be held to deprive a limited  
12 partner of ~~his~~ a statutory exemption. \*

322\*#26S

13 322.26 PARTIES TO ACTIONS.

14 A contributor, unless ~~he-is~~ a general partner, is not a  
15 proper party to proceedings by or against a partnership, except  
16 where the object is to enforce a limited partner's right against  
17 or liability to the partnership. \*

322A#01S

18 322A.01 DEFINITIONS.

19 As used in sections 322A.01 to 322A.87, unless the context  
20 otherwise requires:

21 (1) "Certificate of limited partnership" means the  
22 certificate referred to in section 322A.11, and the certificate  
23 as amended.

24 (2) "Contribution" means any cash, property, services  
25 rendered, or a promissory note or other binding obligation to  
26 contribute cash or property or to perform services, which a  
27 partner contributes to a limited partnership ~~in-his-capacity~~ as  
28 a partner. \*

29 (3) "Event of withdrawal of a general partner" means an  
30 event that causes a person to cease to be a general partner as  
31 provided in section 322A.32.

32 (4) "Foreign limited partnership" means a partnership  
33 formed under the laws of any state other than this state and  
34 having as partners one or more general partners and one or more  
35 limited partners.

36 (5) "General partner" means a person who has been admitted  
37 to a limited partnership as a general partner in accordance with  
38 the partnership agreement and named in the certificate of  
39 limited partnership as a general partner.

40 (6) "Limited partner" means a person who has been admitted  
41 to a limited partnership as a limited partner in accordance with  
42 the partnership agreement and named in the certificate of  
43 limited partnership as a limited partner.

44 (7) "Limited partnership" and "domestic limited  
45 partnership" mean a partnership formed by two or more persons  
46 under the laws of this state and having one or more general  
47 partners and one or more limited partners.

48 (8) "Partner" means a limited or general partner.

49 (9) "Partnership agreement" means any valid agreement,  
50 written or oral, of the partners as to the affairs of a limited  
51 partnership and the conduct of its business.

52 (10) "Partnership interest" means a partner's share of the  
53 profits and losses of a limited partnership and the right to  
54 receive distributions of partnership assets.

55 (11) "Person" means a natural person, partnership, limited  
56 partnership (domestic or foreign), trust, estate, association,  
57 or corporation.

58 (12) "State" means a state, territory, or possession of the  
59 United States, the District of Columbia, or the Commonwealth of  
60 Puerto Rico.

322A#03S

61 322A.03 RESERVATION OF NAME.

62 (a) The exclusive right to the use of a name may be  
63 reserved by:

64 (1) any person intending to organize a limited partnership  
65 under sections 322A.01 to 322A.87 and to adopt that name;

66 (2) any domestic limited partnership or any foreign limited  
67 partnership registered in this state which, in either case,  
68 intends to adopt that name;

69 (3) any foreign limited partnership intending to register  
70 in this state and adopt that name; and

71 (4) any person intending to organize a foreign limited  
72 partnership and intending to have it register in this state and  
73 adopt that name.

1 (b) The reservation shall be made by filing with the  
 2 secretary of state an application, executed by the applicant, to  
 3 reserve a specified name. ~~If the secretary of state finds~~ On  
 4 finding that the name is available for use by a domestic or  
 5 foreign limited partnership, ~~he~~ the secretary of state shall  
 6 reserve the name for the exclusive use of the applicant for a  
 7 period of 120 days. Once having so reserved a name, the same  
 8 applicant may not again reserve the same name until more than 60  
 9 days after the expiration of the last 120-day period for which  
 10 that applicant reserved that name. The right to the exclusive  
 11 use of a reserved name may be transferred to any other person by  
 12 filing in the office of the secretary of state a notice of the  
 13 transfer, executed by the applicant for whom the name was  
 14 reserved and specifying the name and address of the transferee.

322A#11S

## 322A.11 CERTIFICATE OF LIMITED PARTNERSHIP.

16 (a) In order to form a limited partnership two or more  
 17 persons must execute a certificate of limited partnership. The  
 18 certificate shall be filed in the office of the secretary of  
 19 state and set forth:

- 20 (1) the name of the limited partnership;
- 21 (2) the general character of its business;
- 22 (3) the address of the office and the name and address of  
 23 the agent for service of process required to be maintained by  
 24 section 322A.04;
- 25 (4) the name and the business address of each partner  
 26 (specifying separately the general partners and limited  
 27 partners);
- 28 (5) the amount of cash and a description and statement of  
 29 the agreed value of the other property or services contributed  
 30 by each partner and which each partner has agreed to contribute  
 31 in the future;
- 32 (6) the times at which or events on the happening of which  
 33 any additional contributions agreed to be made by each partner  
 34 are to be made;
- 35 (7) any power of a limited partner to grant the right to  
 36 become a limited partner to an assignee of any part of ~~his~~ that  
 37 partner's partnership interest, and the terms and conditions of  
 38 the power;
- 39 (8) if agreed upon, the time at which or the events on the  
 40 happening of which a partner may terminate ~~his~~ membership in the  
 41 limited partnership and the amount of, or the method of  
 42 determining, the distribution to which ~~he~~ that partner may be  
 43 entitled respecting ~~his~~ that partner's partnership interest, and  
 44 the terms and conditions of the termination and distribution;
- 45 (9) any right of a partner to receive distributions of  
 46 property, including cash from the limited partnership;
- 47 (10) any right of a partner to receive, or of a general  
 48 partner to make, distributions to a partner which include a  
 49 return of all or any part of the partner's contribution;
- 50 (11) any time at which or events upon the happening of  
 51 which the limited partnership is to be dissolved and its affairs  
 52 wound up;
- 53 (12) any right of the remaining general partners to  
 54 continue the business on the happening of an event of withdrawal  
 55 of a general partner; and
- 56 (13) any other matters the partners determine to include  
 57 therein.

58 (b) A limited partnership is formed at the time of the  
 59 filing of the certificate of limited partnership in the office  
 60 of the secretary of state or at any later time specified in the  
 61 certificate of limited partnership if, in either case, there has  
 62 been substantial compliance with the requirements of this  
 63 section.

322A#16S

## 322A.16 FILING IN OFFICE OF SECRETARY OF STATE.

65 (a) A signed copy of the certificate of limited  
 66 partnership, of any certificates of amendment or cancellation or  
 67 of any judicial decree of amendment or cancellation shall be  
 68 delivered to the secretary of state. A person who executes a  
 69 certificate as an agent or fiduciary need not exhibit evidence  
 70 of ~~his~~ the executor's authority as a prerequisite to filing.  
 71 Unless the secretary of state finds that any certificate does  
 72 not conform to law, upon receipt of a \$10 filing fee and, in the  
 73 case of a certificate of limited partnership, a \$50 initial fee,  
 74 the secretary shall:

(1) endorse on the original the word "Filed" and the day, month and year of the filing; and

(2) return the original to the person who filed it or his a representative.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership shall be amended as set forth in the amendment, and upon the effective date of a certificate of cancellation or a judicial decree of it, the certificate of limited partnership is canceled.

322A#17S

322A.17 LIABILITY FOR FALSE STATEMENT IN CERTIFICATE.

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person who executes the certificate, or causes another to execute it on his the person's behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under section 322A.15.

322A#26S

322A.26 LIABILITY TO THIRD PARTIES.

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he that partner is also a general partner or, takes part in the control of the business in addition to the exercise of his a limited partner's rights and powers as-a-limited partner, he-takes-part-in-the-control-of-the-business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he that limited partner is liable only to persons who transact business with the limited partnership with actual knowledge of his that limited partner's participation in control.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

(1) being a contractor for or an agent or employee of the limited partnership or of a general partner;

(2) consulting with and advising a general partner with respect to the business of the limited partnership;

(3) acting as surety for the limited partnership;

(4) approving or disapproving an amendment to the partnership agreement; or

(5) voting on one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the removal of a general partner.

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by-him in the business of the limited partnership.

(d) A-limited-partner-who-knowingly-permits-his The use of a limited partner's name to-be-used, with the limited partner's permission and knowledge, in the name of the limited partnership, except under circumstances permitted by section 322A.02, clause (2)(i), is makes the limited partner liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

322A#27S

322A.27 PERSON-ERRONEOUSLY-BELIEVING-HIMSELF ERRONEOUS

1 BELIEF THAT ONE IS A LIMITED PARTNER. \*

2 (a) Except as provided in subsection (b), a person who  
3 makes a contribution to a business enterprise and erroneously  
4 but in good faith believes that ~~he~~ the person has become a \*  
5 limited partner in the enterprise is not a general partner in  
6 the enterprise and is not bound by its obligations by reason of  
7 making the contribution, receiving distributions from the  
8 enterprise, or exercising any rights of a limited partner, if,  
9 on ascertaining the mistake, ~~he~~ the person: \*

10 (1) causes an appropriate certificate of limited  
11 partnership or a certificate of amendment to be executed and  
12 filed; or

13 (2) withdraws from future equity participation in the  
14 enterprise by executing and filing in the office of the  
15 secretary of state a certificate declaring withdrawal under this  
16 section.

17 (b) A person who makes a contribution of the kind described  
18 in subsection (a) is liable as a general partner to any third  
19 party who transacts business with the enterprise (i) before the  
20 person withdraws and an appropriate certificate is filed to show  
21 withdrawal, or (ii) before an appropriate certificate is filed  
22 to show ~~his~~ the person's status as a limited partner and, in the \*  
23 case of an amendment, after expiration of the 30-day period for  
24 filing an amendment relating to the person as a limited partner  
25 under section 322A.12, but in either case only if the third  
26 party actually believed in good faith that the person was a  
27 general partner at the time of the transaction.

322A#32S

28 322A.32 EVENTS OF WITHDRAWAL.

29 Except as approved by the specific written consent of all  
30 partners at the time, a person ceases to be a general partner of  
31 a limited partnership upon the happening of any of the following  
32 events:

33 (1) the general partner withdraws from the limited  
34 partnership as provided in section 322A.46;

35 (2) the general partner ceases to be a member of the  
36 limited partnership as provided in section 322A.56;

37 (3) the general partner is removed as a general partner in  
38 accordance with the partnership agreement;

39 (4) unless otherwise provided in the certificate of limited  
40 partnership, the general partner:

41 (i) makes an assignment for the benefit of creditors;

42 (ii) files a voluntary petition in bankruptcy;

43 (iii) is adjudicated a bankrupt or insolvent;

44 (iv) files a petition or answer seeking ~~for-himself as~~ \*  
45 general partner any reorganization, arrangement, composition, \*  
46 readjustment, liquidation, dissolution or similar relief under  
47 any statute, law, or regulation;

48 (v) files an answer or other pleading admitting or failing  
49 to contest the material allegations of a petition filed against  
50 ~~him~~ the general partner in any proceeding of this nature; or \*

51 (vi) seeks, consents to, or acquiesces in the appointment  
52 of a trustee, receiver, or liquidator of the general partner or  
53 of all or any substantial part of ~~his~~ the general partner's \*  
54 properties;

55 (5) unless otherwise provided in the certificate of limited  
56 partnership, 120 days after the commencement of any proceeding  
57 against the general partner seeking reorganization, arrangement,  
58 composition, readjustment, liquidation, dissolution or similar  
59 relief under any statute, law, or regulation, the proceeding has  
60 not been dismissed, or if within 90 days after the appointment  
61 without ~~his~~ the general partner's consent or acquiescence of a \*  
62 trustee, receiver, or liquidator of the general partner or of  
63 all or any substantial part of ~~his~~ the general partner's \*  
64 properties, the appointment is not vacated or stayed or within  
65 90 days after the expiration of any such stay, the appointment  
66 is not vacated;

67 (6) in the case of a general partner who is a natural  
68 person:

69 (i) ~~his~~ the general partner's death; or \*

70 (ii) the entry by a court of competent jurisdiction  
71 adjudicating ~~him~~ the general partner incompetent as to manage \*  
72 his person or his estate; \*

73 (7) in the case of a general partner who is acting as a  
74 general partner by virtue of being a trustee of a trust, the  
75 termination of the trust (but not merely the substitution of a

1 new trustee);

2 (8) in the case of a general partner that is a separate  
3 partnership, the dissolution and commencement of winding up of  
4 the separate partnership;

5 (9) in the case of a general partner that is a corporation,  
6 the filing of a certificate of dissolution, or its equivalent,  
7 for the corporation or the revocation of its charter; or

8 (10) in the case of an estate, the distribution by the  
9 fiduciary of the estate's entire interest in the partnership.

322A#34S

10 322A.34 CONTRIBUTIONS BY GENERAL PARTNER.

11 A general partner of a limited partnership may make  
12 contributions to the partnership and share in the profits and  
13 losses of, and in distributions from, the limited partnership as  
14 a general partner. A general partner also may make  
15 contributions to and share in profits, losses, and distributions  
16 as a limited partner. A person who is both a general partner  
17 and a limited partner has the rights and powers, and is subject  
18 to the restrictions and liabilities, of a general partner and,  
19 except as provided in the partnership agreement, also has the  
20 powers, and is subject to the restrictions, of a limited partner  
21 to the extent of his the person's participation in the \*  
22 partnership as a limited partner.

322A#39S

23 322A.39 LIABILITY FOR CONTRIBUTION.

24 (a) Except as provided in the certificate of limited  
25 partnership, a partner is obligated to the limited partnership  
26 to perform any promise to contribute cash or property or to  
27 perform services, even if he the partner is unable to perform \*  
28 because of death, disability or any other reason. If a partner  
29 does not make the required contribution of property or  
30 services, he that partner is obligated at the option of the \*  
31 limited partnership to contribute cash equal to that portion of  
32 the value (as stated in the certificate of limited partnership)  
33 of the stated contribution that has not been made.

34 (b) Unless otherwise provided in the partnership agreement,  
35 the obligation of a partner to make a contribution or return  
36 money or other property paid or distributed in violation of  
37 sections 322A.01 to 322A.87 may be compromised only by consent  
38 of all the partners. Notwithstanding the compromise, a creditor  
39 of a limited partnership who extends credit, or whose claim  
40 arises, after the filing of the certificate of limited  
41 partnership or an amendment thereto which, in either case,  
42 reflects the obligation, and before the amendment or  
43 cancellation thereof to reflect the compromise, may enforce the  
44 original obligation.

322A#45S

45 322A.45 INTERIM DISTRIBUTIONS.

46 Except as provided in sections 322A.45 to 322A.52, a  
47 partner is entitled to receive distributions from a limited  
48 partnership before his withdrawal from the limited partnership \*  
49 and before the dissolution and winding up thereof:

50 (1) to the extent and at the times or upon the happening of  
51 the events specified in the partnership agreement; and

52 (2) if any distribution constitutes a return of any part of  
53 his the partner's contribution under section 322A.52, subsection \*  
54 (b), to the extent and at the times or upon the happening of the  
55 events specified in the certificate of limited partnership.

322A#46S

56 322A.46 WITHDRAWAL OF GENERAL PARTNER.

57 A general partner may withdraw from a limited partnership  
58 at any time by giving written notice to the other partners, but  
59 if the withdrawal violates the partnership agreement, the  
60 limited partnership may recover from the withdrawing general  
61 partner damages for breach of the partnership agreement and  
62 offset the damages against the amount otherwise distributable to  
63 him the withdrawing general partner. \*

322A#47S

64 322A.47 WITHDRAWAL OF LIMITED PARTNER.

65 A limited partner may withdraw from a limited partnership  
66 at the time or upon the happening of events specified in the  
67 certificate of limited partnership and in accordance with the  
68 partnership agreement. If the certificate does not specify the  
69 time or the events upon the happening of which a limited partner  
70 may withdraw or a definite time for the dissolution and winding  
71 up of the limited partnership, a limited partner may withdraw

1 upon not less than six months' prior written notice to each  
2 general partner at ~~his~~ each's address on the books of the  
3 limited partnership at its office in this state. \*

## 322A#48S

4 322A.48 DISTRIBUTION UPON WITHDRAWAL.

5 Except as provided in sections 322A.45 to 322A.52, upon  
6 withdrawal any withdrawing partner is entitled to receive any  
7 distribution to which ~~he-is~~ entitled under the partnership  
8 agreement and, if not otherwise provided in the agreement, ~~he~~  
9 the withdrawing partner is entitled to receive, within a  
10 reasonable time after withdrawal, the fair value of ~~his~~ the  
11 withdrawing partner's interest in the limited partnership as of  
12 the date of withdrawal based upon ~~his~~ that partner's right to  
13 share in distributions from the limited partnership. \*

## 322A#49S

14 322A.49 DISTRIBUTION IN KIND.

15 Except as provided in the certificate of limited  
16 partnership, a partner, regardless of the nature of ~~his~~  
17 contribution, has no right to demand and receive any  
18 distribution from a limited partnership in any form other than  
19 cash. Except as provided in the partnership agreement, a  
20 partner may not be compelled to accept a distribution of any  
21 asset in kind from a limited partnership to the extent that the  
22 percentage of the asset distributed to ~~him~~ that partner exceeds  
23 a percentage of that asset which is equal to the percentage in  
24 which ~~he~~ that partner shares in distributions from the limited  
25 partnership. \*

## 322A#50S

26 322A.50 RIGHT TO DISTRIBUTION.

27 ~~At-the-time-a-partner-becomes~~ On becoming entitled to  
28 receive a distribution, ~~he~~ a partner has the status of, and is  
29 entitled to all remedies available to, a creditor of the limited  
30 partnership with respect to the distribution. \*

## 322A#52S

31 322A.52 LIABILITY UPON RETURN OF CONTRIBUTION.

32 (a) If a partner has received the return of any part of ~~his~~  
33 a contribution without violation of the partnership agreement or  
34 sections 322A.01 to 322A.87, ~~he~~ that partner is liable to the  
35 limited partnership for a period of one year thereafter for the  
36 amount of the returned contribution, but only to the extent  
37 necessary to discharge the limited partnership's liabilities to  
38 creditors who extended credit to the limited partnership during  
39 the period the contribution was held by the partnership. \*

40 (b) If a partner has received the return of any part of ~~his~~  
41 a contribution in violation of the partnership agreement or  
42 sections 322A.01 to 322A.87, ~~he~~ that partner is liable to the  
43 limited partnership for a period of six years thereafter for the  
44 amount of the contribution wrongfully returned. \*

45 (c) A partner receives a return of ~~his~~ a contribution to  
46 the extent that a distribution ~~to-him~~ reduces ~~his~~ that partner's  
47 share of the fair value of the net assets of the limited  
48 partnership below the value (as set forth in the certificate of  
49 limited partnership) of ~~his~~ the contribution which has not been  
50 distributed to ~~him~~ that partner. \*

## 322A#56S

51 322A.56 ASSIGNMENT OF PARTNERSHIP INTEREST.

52 Except as provided in the partnership agreement, a  
53 partnership interest is assignable in whole or in part. An  
54 assignment of a partnership interest does not dissolve a limited  
55 partnership or entitle the assignee to become or to exercise any  
56 rights of a partner. An assignment entitles the assignee to  
57 receive, to the extent assigned, only the distribution to which  
58 the assignor would be entitled. Except as provided in the  
59 partnership agreement, a partner ceases to be a partner upon  
60 assignment of all ~~his~~ the partner's partnership interest. \*

## 322A#57S

61 322A.57 RIGHTS OF CREDITOR.

62 On application to a court of competent jurisdiction by any  
63 judgment creditor of a partner, the court may charge the  
64 partnership interest of the partner with payment of the  
65 unsatisfied amount of the judgment with interest. To the extent  
66 so charged, the judgment creditor has only the rights of an  
67 assignee of the partnership interest. Sections 322A.01 to  
68 322A.87 do not deprive any partner of the benefit of any  
69 exemption laws applicable to ~~his~~ that partner's partnership  
70 interest. \*

322A#58S

1 322A.58 RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.  
 2 (a) An assignee of a partnership interest, including an  
 3 assignee of a general partner, may become a limited partner if  
 4 and to the extent that (1) the assignor gives the assignee that  
 5 right in accordance with authority described in the certificate  
 6 of limited partnership, or (2) all other partners consent.  
 7 (b) An assignee who has become a limited partner has, to  
 8 the extent assigned, the rights and powers, and is subject to  
 9 the restrictions and liabilities, of a limited partner under the  
 10 partnership agreement and sections 322A.01 to 322A.87. An  
 11 assignee who becomes a limited partner also is liable for the  
 12 obligations of ~~his~~ the assignor to make and return contributions \*  
 13 as provided in sections 322A.45 to 322A.52. However, the  
 14 assignee is not obligated for liabilities unknown to the \*  
 15 assignee at the time ~~he-became~~ of becoming a limited partner and  
 16 which could not be ascertained from the certificate of limited  
 17 partnership.  
 18 (c) If an assignee of a partnership interest becomes a \*  
 19 limited partner, the assignor is not released from ~~his~~ liability \*  
 20 to the limited partnership under sections 322A.17 and 322A.39.

322A#59S

21 322A.59 POWER OF ESTATE OF DECEASED OR INCOMPETENT  
 22 PARTNER.  
 23 If a partner who is an individual dies or a court of  
 24 competent jurisdiction adjudges ~~him~~ that partner to be \*  
 25 incompetent to manage ~~his~~ person or ~~his~~ property, the partner's \*  
 26 executor, administrator, guardian, conservator, or other legal  
 27 representative may exercise all the partner's rights for the  
 28 purpose of settling ~~his~~ the estate or administering ~~his~~ the \*  
 29 property, including any power the partner had to give an  
 30 assignee the right to become a limited partner. If a partner is  
 31 a corporation, trust, or other entity and is dissolved or  
 32 terminated, the powers of that partner may be exercised by its  
 33 legal representative or successor.

322A#65S

34 322A.65 WINDING UP.  
 35 Except as provided in the partnership agreement, the  
 36 general partners who have not wrongfully dissolved a limited  
 37 partnership or, if none, the limited partners, may wind up the  
 38 limited partnership's affairs; but the district court may wind  
 39 up the limited partnership's affairs upon application of any  
 40 partner, ~~his~~ a legal representative, or assignee. \*

322A#71S

41 322A.71 ISSUANCE OF REGISTRATION.  
 42 (a) If the secretary of state finds that an application for  
 43 registration conforms to law and a \$10 filing fee and a \$50  
 44 initial registration fee has been paid, the secretary shall:  
 45 (1) endorse on the application the word "Filed," and the  
 46 month, day and year of the filing thereof;  
 47 (2) file ~~in-his-office~~ a duplicate original of the \*  
 48 application; and  
 49 (3) issue a certificate of registration to transact  
 50 business in this state.  
 51 (b) The certificate of registration, together with a  
 52 duplicate original of the application, shall be returned to the  
 53 person who filed the application or ~~his~~ a representative of that \*  
 54 person. \*

322A#80S

55 322A.80 PROPER PLAINTIFF.  
 56 In a derivative action, the plaintiff must be a partner at  
 57 the time of bringing the action and (1) at the time of the  
 58 transaction of which he-complains complaint is made or (2) ~~his~~ \*  
 59 plaintiff's status as a partner had devolved upon-him by \*  
 60 operation of law or pursuant to the terms of the partnership  
 61 agreement from a person who was a partner at the time of the  
 62 transaction.

322A#82S

63 322A.82 EXPENSES.  
 64 If a derivative action is successful, in whole or in part,  
 65 or if anything is received by the plaintiff as a result of a  
 66 judgment, compromise or settlement of an action or claim, the  
 67 court may award the plaintiff reasonable expenses, including  
 68 reasonable attorney's fees, and shall direct ~~him~~ the plaintiff \*  
 69 to remit to the limited partnership the remainder of those the \*  
 70 proceeds received by-him. \*

## 323\*#03S

1 323.03 INTERPRETATIONS.

2 No change for subd 1

3 Subd. 2. KNOWLEDGE OF A FACT. A person has

4 "knowledge" of a fact not only ~~when-he-has~~ with actual knowledge \*  
5 thereof, but also ~~when-he-has~~ with knowledge of such other facts \*  
6 as in the circumstances show bad faith.

7 Subd. 3. NOTICE OF A FACT. A person has "notice" of  
8 a fact when the person who claims the benefit of the notice

9 (1) States the fact to such person, or

10 (2) Delivers through the mail or by other means of  
11 communication a written statement of the fact to such person or  
12 to a proper person at ~~his~~ the person's place of business or \*  
13 residence.

## 323\*#06S

14 323.06 DETERMINATION OF WHETHER PARTNERSHIP EXISTS.

15 In determining whether a partnership exists, these rules  
16 shall apply:

17 (1) Except as provided by section 323.15, persons who are  
18 not partners as to each other are not partners as to third  
19 persons;

20 (2) Joint tenancy, tenancy in common, tenancy by the  
21 entirety, joint property, common property, or part ownership  
22 does not of itself establish a partnership, whether such  
23 coowners do or do not share any profits made by the use of the  
24 property;

25 (3) The sharing of gross returns does not of itself  
26 establish a partnership, whether or not the persons sharing them  
27 have a joint or common right or interest in any property from  
28 which the returns are derived;

29 (4) The receipt by a person of a share of the profits of a  
30 business is prima facie evidence ~~that-he-is-a-partner~~ of  
31 partnership in the business, but no such inference shall be \*  
32 drawn if such profits were received in payment \*

33 (a) As a debt by instalments or otherwise,

34 (b) As wages of an employee or rent to a landlord,

35 (c) As an annuity to a widow surviving spouse or \*  
36 representative of a deceased partner,

37 (d) As interest on a loan, though the amount of payment  
38 vary with the profits of the business, or

39 (e) As the consideration for the sale of a good will of a  
40 business or other property by instalments or otherwise.

## 323\*#08S

41 323.08 PARTNERS ARE AGENTS OF PARTNERSHIP.

42 Every partner is an agent of the partnership for the  
43 purpose of its business, and the act of every partner, including  
44 the execution in the partnership name of any instrument, for  
45 apparently carrying on in the usual way the business of the  
46 partnership ~~of-which-he-is-a-member~~ binds the partnership, \*  
47 unless the partner so acting has in fact no authority to act for  
48 the partnership in the particular matter, and the person with  
49 whom he that partner is dealing has knowledge of the fact that \*  
50 he that partner has no such authority. \*

51 An act of a partner which is not apparently for the  
52 carrying on of the business of the partnership in the usual way  
53 does not bind the partnership unless authorized by the other  
54 partners.

55 Unless authorized by the other partners or unless they have  
56 abandoned the business, one or more but less than all the  
57 partners have no authority to:

58 (1) Assign the partnership property in trust for creditors  
59 or on the assignee's promise to pay the debts of the partnership;

60 (2) Dispose of the good-will of the business;

61 (3) Do any other act which would make it impossible to  
62 carry on the ordinary business of a partnership;

63 (4) Confess a judgment;

64 (5) Submit a partnership claim or liability to arbitration  
65 or reference.

66 No act of a partner in contravention of a restriction on  
67 authority shall bind the partnership to persons having knowledge  
68 of the restriction.

## 323\*#09S

69 323.09 CONVEYANCE OF REAL PROPERTY OF THE PARTNERSHIP.

70 Where title to real property is in the partnership name,  
71 any partner may convey title to such property by a conveyance  
72 executed in the partnership name; but the partnership may



1 recover such property unless the partner's act binds the  
 2 partnership under the provisions of section 323.08, or unless  
 3 the property has been conveyed by the grantee or a person  
 4 claiming through such grantee to a holder for value without  
 5 knowledge that the partner, in making the conveyance, has  
 6 exceeded ~~his~~ authority. \*

7 Where title to real property is in the name of the  
 8 partnership, a conveyance executed by a partner, in ~~his~~ that \*  
 9 partner's own name, passes the equitable interest of the \*  
 10 partnership, provided the act is one within the authority of the  
 11 partner under the provisions of section 323.08.

12 Where title to real property is in the name of one or more  
 13 but not all the partners, and the record does not disclose the  
 14 right of the partnership, the partners in whose names the title  
 15 stands may convey title to such property, but the partnership  
 16 may recover such property if the partners' act does not bind the  
 17 partnership under the provisions of section 323.08, unless the  
 18 purchaser, or ~~his~~ the purchaser's assignee, is a holder for \*  
 19 value, without knowledge.

20 Where the title to real property is in the name of one or  
 21 more or all the partners, or in a third person in trust for the  
 22 partnership, a conveyance executed by a partner in the  
 23 partnership name, or in ~~his~~ that partner's own name, passes the \*  
 24 equitable interest of the partnership, provided the act is one  
 25 within the authority of the partner under the provisions of  
 26 section 323.08.

27 Where the title to real property is in the names of all the  
 28 partners, a conveyance executed by all the partners passes all  
 29 their rights in such property.

323\*#10S

30 323.10 PARTNERSHIP BOUND BY ADMISSION OF PARTNER.

31 An admission or representation made by any partner  
 32 concerning partnership affairs within the scope of ~~his~~ that \*  
 33 partner's authority, as conferred by this chapter, is evidence \*  
 34 against the partnership.

323\*#11S

35 323.11 NOTICE TO OR KNOWLEDGE OF PARTNER CHARGES  
36 PARTNERSHIP.

37 Notice to any partner of any matter relating to partnership  
 38 affairs, and the knowledge of the partner acting in the  
 39 particular matter, acquired while a partner or then present to  
 40 ~~his~~ that partner's mind, and the knowledge of any other partner \*  
 41 who reasonably could and should have communicated it to the  
 42 acting partner, operate as notice to or knowledge of the  
 43 partnership, except in the case of a fraud on the partnership  
 44 committed by or with the consent of that partner.

323\*#12S

45 323.12 PARTNERSHIP LIABLE FOR PARTNER'S WRONGFUL ACT.

46 Where, by any wrongful act or omission of any partner  
 47 acting in the ordinary course of the business of the partnership  
 48 or with the authority of ~~his~~ copartners, loss or injury is \*  
 49 caused to any person, not being a partner in the partnership, or  
 50 any penalty is incurred, the partnership is liable therefor to  
 51 the same extent as the partner so acting or omitting to act.

323\*#13S

52 323.13 PARTNERSHIP LIABLE FOR PARTNER'S BREACH OF TRUST.

53 The partnership is bound to make good the loss:

54 (1) Where one partner acting within the scope of ~~his~~ \*  
 55 apparent authority receives money or property of a third person  
 56 and misapplies it; and

57 (2) Where the partnership in the course of its business  
 58 receives money or property of a third person and the money or  
 59 property so received is misapplied by any partner while it is in  
 60 the custody of the partnership.

323\*#15S

61 323.15 PARTNER BY ESTOPPEL.

62 Subdivision 1. REPRESENTATIONS. When a person, by  
 63 words spoken or written or by conduct, ~~represents-himself~~ makes, \*  
 64 or consents to ~~another-representing-him~~ another's making, a \*  
 65 representation to any one,--as that the person is a partner in an \*  
 66 existing partnership or with one or more persons not actual \*  
 67 partners, he the person represented to be a partner is liable to \*  
 68 any-such-person one to whom such representation has been made, \*  
 69 who has, on the faith of such representation, given credit to  
 70 the actual or apparent partnership, and if he the person \*  
 71 represented to be a partner has made such representation or \*

1 consented to its being made in the public manner, ~~he~~ such a \*  
 2 person is liable to ~~such-person~~ the one giving credit, whether \*  
 3 the representation has or has not been made or communicated \*  
 4 to ~~such-person-so~~ the one giving credit by or with the knowledge \*  
 5 of the ~~apparent-partner-making-the-representation-or-consenting~~ \*  
 6 ~~to-its-being-made~~ person represented to be a partner: \*

7 (1) When a partnership liability results, ~~he~~ the person \*  
 8 represented to be a partner is as liable as though ~~he-were~~ an \*  
 9 actual member of the partnership;

10 (2) When no partnership liability results, ~~he~~ the person \*  
 11 represented to be a partner is liable jointly with the other \*  
 12 persons, if any, so consenting to the contract or representation  
 13 as to incur liability, otherwise separately.

14 Subd. 2. AGENT. When a person has been thus  
 15 represented to be a partner in an existing partnership, or with  
 16 one or more persons not actual partners, ~~he~~ the person \*  
 17 represented to be a partner is an agent of the persons \*  
 18 consenting to such representation to bind them to the same \*  
 19 extent and in the same manner as though ~~he~~ the person \*  
 20 represented to be a partner were a partner in fact, with respect \*  
 21 to persons who rely upon the representation. Where all the  
 22 members of the existing partnership consent to the  
 23 representation, a partnership act or obligation results; but in  
 24 all other cases it is the joint act or obligation of the person  
 25 acting and the persons consenting to the representation.

323\*#16S

26 323.16 LIABILITY OF INCOMING PARTNER.

27 A person admitted as a partner into an existing partnership  
 28 is liable for all the obligations of the partnership arising  
 29 before ~~his~~ admission as though ~~he-had-been~~ a partner when such \*  
 30 obligations were incurred, except that this liability shall be  
 31 satisfied only out of partnership property.

323\*#17S

32 323.17 RIGHTS AND DUTIES OF PARTNERS.

33 The rights and duties of the partners in relation to the  
 34 partnership shall be determined, subject to any agreement  
 35 between them, by the following rules:

36 (1) Each partner shall be repaid ~~his~~ contributions, whether \*  
 37 by way of capital or advances to the partnership property and  
 38 share equally in the profits and surplus remaining after all  
 39 liabilities, including those to partners, are satisfied; and  
 40 must contribute towards the losses, whether of capital or  
 41 otherwise, sustained by the partnership according to ~~his~~ each \*  
 42 partner's share in the profits; \*

43 (2) The partnership must indemnify every partner in respect  
 44 of payments made and personal liabilities reasonably incurred by  
 45 ~~him~~ that partner in the ordinary and proper conduct of its \*  
 46 business, or for the preservation of its business or property;

47 (3) A partner, who in aid of the partnership makes any  
 48 payment or advance beyond the amount of capital which ~~he~~ the \*  
 49 partner agreed to contribute, shall be paid interest from the \*  
 50 date of the payment or advance;

51 (4) A partner shall receive interest on the capital  
 52 contributed ~~by-him~~ only from the date when repayment should be \*  
 53 made;

54 (5) All partners have equal rights in the management and  
 55 conduct of the partnership business;

56 (6) No partner is entitled to remuneration for acting in  
 57 the partnership business, except that a surviving partner is  
 58 entitled to reasonable compensation for ~~his~~ services in winding \*  
 59 up the partnership affairs;

60 (7) No person can become a member of a partnership without  
 61 the consent of all the partners;

62 (8) Any difference arising as to ordinary matters connected  
 63 with the partnership business may be decided by a majority of  
 64 the partners; but no act in contravention of any agreement  
 65 between the partners may be done rightfully without the consent  
 66 of all the partners.

323\*#20S

67 323.20 PARTNER ACCOUNTABLE AS A FIDUCIARY.

68 Every partner must account to the partnership for any  
 69 benefit, and hold as trustee for it any profits derived by ~~him~~ \*  
 70 that partner without the consent of the other partners from any \*  
 71 transaction connected with the formation, conduct, or  
 72 liquidation of the partnership or from any use by ~~him~~ that \*  
 73 partner of its property. \*

1 This section applies also to the representatives of a  
2 deceased partner engaged in the liquidation of the affairs of  
3 the partnership as the personal representatives of the last  
4 surviving partner.

## 323\*#21S

5 323.21 RIGHT TO AN ACCOUNT.

6 Any partner shall have the right to a formal account as to  
7 partnership affairs

8 (1) If ~~he-is~~ wrongfully excluded from the partnership \*  
9 business or possession of its property by ~~his~~ copartners; \*

10 (2) If the right exists under the terms of any agreement;

11 (3) As provided by section 323.20; or

12 (4) When other circumstances render it just and reasonable.

## 323\*#23S

13 323.23 PROPERTY RIGHTS OF A PARTNER.

14 The property rights of a partner are ~~his~~ rights in specific \*  
15 partnership property, ~~his~~ an interest in the partnership, and \*  
16 ~~his~~ the right to participate in the management. \*

## 323\*#24S

17 323.24 NATURE OF A PARTNER'S RIGHT IN SPECIFIC  
18 PARTNERSHIP PROPERTY.

19 A partner is coowner with ~~his~~ the other partners of \*  
20 specific partnership property holding as a tenant in partnership.

21 The incidents of this tenancy are such that:

22 (1) A partner, subject to the provisions of this chapter  
23 and to any agreement between the partners, has an equal right

24 with ~~his~~ the other partners to possess specific partnership \*  
25 property for partnership purposes; but ~~he~~ has no right to \*  
26 possess such property for any other purpose without the consent

27 of ~~his~~ the other partners; \*

28 (2) A partner's right in specific partnership property is  
29 not assignable except in connection with the assignment of the  
30 rights of all the partners in the same property;

31 (3) A partner's right in specific partnership property is  
32 not subject to attachment, garnishment or execution, except on a  
33 claim against the partnership; when partnership property is  
34 attached for a partnership debt the partners, or any of them, or  
35 the representatives of a deceased partner; cannot claim any  
36 right under the homestead or exemption laws;

37 (4) On the death of a partner ~~his~~ that partner's right in \*  
38 specific partnership property vests in the surviving partner or  
39 partners, except where the deceased was the last surviving  
40 partner, when ~~his~~ the deceased's right in such property vests in \*  
41 ~~his~~ the deceased's legal representative; such surviving partner \*  
42 or partners, or the legal representative of the last surviving  
43 partner, has no right to possess the partnership property for  
44 any but a partnership purpose; and

45 (5) A partner's right in specific partnership property is  
46 not subject to dower, curtesy, the statutory interest of a  
47 surviving spouse, or allowances to ~~widows~~ a surviving spouse, \*  
48 heirs or next of kin.

## 323\*#25S

49 323.25 PARTNER'S INTEREST IN THE PARTNERSHIP.

50 A partner's interest in the partnership is ~~his~~ that \*  
51 partner's share of the profits and surplus, and the same is \*  
52 personal property.

## 323\*#26S

53 323.26 ASSIGNMENT OF PARTNER'S INTEREST.

54 A conveyance by a partner of ~~his~~ that partner's interest in \*  
55 the partnership does not of itself dissolve the partnership,  
56 nor, as against the other partners in the absence of agreement,  
57 entitle the assignee, during the continuance of the partnership,  
58 to interfere in the management or administration of the  
59 partnership business or affairs, or to require any information  
60 or account of partnership transactions, or to inspect the  
61 partnership books; but it merely entitles the assignee to  
62 receive in accordance with ~~his~~ the assigning contract the \*  
63 profits to which the assigning partner would otherwise be  
64 entitled.

65 In case of a dissolution of the partnership, the assignee  
66 is entitled to receive ~~his~~ the assignor's interest and may \*  
67 require an account from the date only of the last account agreed  
68 to by all the partners.

## 323\*#27S

69 323.27 PARTNER'S INTEREST CHARGEABLE AS SUCH.

70 On due application to a competent court by any judgment

1 creditor of a partner, the court which entered the judgment,  
 2 order, or decree, or any other court, may charge the interest of  
 3 the debtor partner with payment of the unsatisfied amount of  
 4 such judgment debt with interest thereon; and may then or later  
 5 appoint a receiver of ~~his~~ the debtor partner's share of the \*  
 6 profits and of any other money due or to fall due to ~~him~~ the \*  
 7 debtor partner in respect of the partnership, and make all other \*  
 8 orders, directions, accounts and inquiries which the debtor  
 9 partner might have made, or which the circumstances of the case  
 10 may require.

11 The interest charged may be redeemed at any time before  
 12 foreclosure, or in case of a sale being directed by the court  
 13 may be purchased without thereby causing a dissolution:

14 (1) With separate property, by any one or more of the  
 15 partners; or

16 (2) With partnership property, by any one or more of the  
 17 partners with the consent of all the partners whose interests  
 18 are not so charged or sold.

19 Nothing in this chapter shall be held to deprive a partner  
 20 of ~~his~~ a right, if any, under the exemption laws, as regards ~~his~~ \*  
 21 that partner's interest in the partnership. \*

323\*#31S

22 323.31 DISSOLUTION BY DECREE OF COURT.

23 On application by or for a partner the court shall decree a  
 24 dissolution whenever:

25 (1) A partner has been declared a lunatic in any judicial  
 26 proceeding or is shown to be of unsound mind;

27 (2) A partner becomes in any other way incapable of  
 28 performing ~~his~~ that partner's part of the partnership contract; \*

29 (3) A partner has been guilty of such conduct as tends to  
 30 affect prejudicially the carrying on of the business;

31 (4) A partner wilfully or persistently commits a breach of  
 32 the partnership agreement, or otherwise so ~~conducts-himself~~ acts \*  
 33 in matters relating to the partnership business that it is not  
 34 reasonably practicable to carry on the business in partnership  
 35 with ~~him~~ that partner; \*

36 (5) The business of the partnership can only be carried on  
 37 at a loss;

38 (6) Other circumstances render a dissolution equitable.

39 On the application of the purchaser of a partner's interest  
 40 under sections 323.27 or 323.26:

41 (1) After the termination of the specified term or  
 42 particular undertaking;

43 (2) At any time if the partnership was a partnership at  
 44 will when the interest was assigned or when the charging order  
 45 was issued.

323\*#33S

46 323.33 RIGHT OF PARTNER TO CONTRIBUTION FROM COPARTNERS  
 47 AFTER DISSOLUTION.

48 Where the dissolution is caused by the act, death, or  
 49 bankruptcy of a partner, each partner is liable to ~~his~~ the \*  
 50 copartners for ~~his~~ each's share of any liability created by any \*  
 51 partner acting for the partnership as if the partnership had not  
 52 been dissolved, unless:

53 (1) The dissolution being by act of any partner, the  
 54 partner acting for the partnership had knowledge of the  
 55 dissolution; or

56 (2) The dissolution being by the death or bankruptcy of a  
 57 partner, the partner acting for the partnership had knowledge or  
 58 notice of the death or bankruptcy.

323\*#34S

59 323.34 PARTNER'S AGENCY AFTER DISSOLUTION.

60 Subdivision 1. BY WHAT ACTS. After dissolution a  
 61 partner can bind the partnership, except as provided in  
 62 subdivision 3:

63 (1) By any act appropriate for winding up partnership  
 64 affairs or completing transactions unfinished at dissolution;

65 (2) By any transaction which would bind the partnership if  
 66 dissolution had not taken place, provided the other party to the  
 67 transaction

68 (a) Had extended credit to the partnership prior to  
 69 dissolution and had no knowledge or notice of the dissolution;  
 70 or

71 (b) Though ~~he~~ the partner had not so extended credit, had \*  
 72 nevertheless known of the partnership prior to dissolution, and,  
 73 having no knowledge or notice of dissolution, the fact of

1 dissolution had not been advertised in a newspaper of general  
2 circulation in the place (or in each place if more than one) at  
3 which the partnership business was regularly carried on.

4 Subd. 2. SATISFACTION OF LIABILITY. The liability  
5 of a partner under subdivision 1, clause (2), shall be satisfied  
6 out of partnership assets alone when such partner had been prior  
7 to dissolution

8 (1) Unknown as a partner to the person with whom the  
9 contract is made; and

10 (2) So far unknown and inactive in partnership affairs that  
11 the business reputation of the partnership could not be said to  
12 have been in any degree due to ~~his~~ the partner's connection with  
13 it. \*

14 Subd. 3. WHEN NOT BOUND. The partnership is in no  
15 case bound by any act of a partner after dissolution

16 (1) Where the partnership is dissolved because it is  
17 unlawful to carry on the business, unless the act is appropriate  
18 for winding up partnership affairs; or

19 (2) Where the partner has become bankrupt; or

20 (3) Where the partner has no authority to wind up  
21 partnership affairs, except by a transaction with one who

22 (a) Had extended credit to the partnership prior to  
23 dissolution and had no knowledge or notice of ~~his~~ the partner's  
24 want of authority; or \*

25 (b) Had not extended credit to the partnership prior to  
26 dissolution, and, having no knowledge or notice of ~~his~~ the  
27 partner's want of authority, the fact of ~~his~~ the partner's  
28 want of authority has not been advertised in the manner provided for  
29 advertising the fact of dissolution in subdivision 1, clause (2)  
30 (b). \*

31 Subd. 4. WHEN LIABLE. Nothing in this section shall  
32 affect the liability under section 323.15 of any person who,  
33 after dissolution, personally represents himself or consents to  
34 another representing ~~him~~ the person as a partner in a  
35 partnership engaged in carrying on business. \*

323\*#35S

36 323.35 DISCHARGE OF EXISTING LIABILITIES ON DISSOLUTION.

37 The dissolution of the partnership does not of itself  
38 discharge the existing liability of any partner.

39 A partner is discharged from any existing liability upon  
40 dissolution of the partnership by an agreement to that effect  
41 between ~~himself~~ that partner, the partnership creditor and the  
42 person or partnership continuing the business; and such  
43 agreement may be inferred from the course of dealing between the  
44 creditor having knowledge of the dissolution and the person or  
45 partnership continuing the business. \*

46 Where a person agrees to assume the existing obligations of  
47 a dissolved partnership, the partners whose obligations have  
48 been assumed shall be discharged from any liability to any  
49 creditor of the partnership who, knowing of the agreement,  
50 consents to a material alteration in the nature or time of  
51 payment of such obligations.

52 The individual property of a deceased partner shall be  
53 liable for all obligations of the partnership incurred while ~~he~~  
54 the deceased was a partner but subject to the prior payment  
55 of ~~his~~ the deceased's separate debts. \*

323\*#36S

56 323.36 RIGHT TO WIND UP.

57 Unless otherwise agreed, the partners who have not  
58 wrongfully dissolved the partnership or the legal representative  
59 of the last surviving partner, not bankrupt, has the right to  
60 wind up the partnership affairs; provided, that any partner, ~~his~~  
61 the partner's legal representative, or ~~his~~ the partner's  
62 assignee, upon cause shown, may obtain winding up by the court. \*

323\*#37S

63 323.37 ALLOCATION OF PARTNERSHIP PROPERTY ON DISSOLUTION.

64 Subdivision 1. RIGHTS. When dissolution is caused  
65 in any way, except in contravention of the partnership  
66 agreement, each partner, as against ~~his~~ the copartners and all  
67 persons claiming through them in respect of their interests in  
68 the partnership, unless otherwise agreed, may have the  
69 partnership property applied to discharge its liabilities, and  
70 the surplus applied to pay in cash the net amount owing to the  
71 respective partners. If dissolution is caused by expulsion of a  
72 partner, bona fide under the partnership agreement, and if the  
73 expelled partner is discharged from all partnership liabilities, \*

1 either by payment or agreement under section 323.35, ~~he the~~  
 2 expelled partner shall receive in cash only the net amount  
 3 due ~~him~~ from the partnership. \*

4 Subd. 2. WHEN DISSOLUTION WRONGFUL. When  
 5 dissolution is caused in contravention of the partnership  
 6 agreement the rights of the partners shall be as follows:

7 (1) Each partner who has not caused dissolution wrongfully  
 8 shall have:

9 (a) All the rights specified in subdivision 1; and

10 (b) The right, as against each partner who has caused the  
 11 dissolution wrongfully, to damages for breach of the agreement;

12 (2) The partners who have not caused the dissolution  
 13 wrongfully, if they all desire to continue the business in the  
 14 same name, either by themselves or jointly with others, may do  
 15 so, during the agreed term for the partnership, and for that  
 16 purpose may possess the partnership property, provided they  
 17 secure the payment by bond approved by the court, or pay to any  
 18 partner who has caused the dissolution wrongfully the value of  
 19 ~~his~~ that partner's interest in the partnership at the  
 20 dissolution, less any damages recoverable under clause (1) (b),  
 21 and in like manner indemnify ~~him~~ that partner against all  
 22 present or future partnership liabilities; \*

23 (3) A partner who has caused the dissolution wrongfully  
 24 shall have:

25 (a) If the business is not continued under the provisions  
 26 of clause (2), all the rights of a partner under subdivision 1,  
 27 subject to clause (1) (b);

28 (b) If the business is continued under clause (2), the  
 29 right as against ~~his~~ the copartners and all claiming through  
 30 them in respect of their interests in the partnership, to have  
 31 the value of ~~his~~ the dissolving partner's interest in the  
 32 partnership, less any damages caused to ~~his~~ the copartners by  
 33 the dissolution, ascertained and paid to ~~him~~ the dissolving  
 34 partner in cash, or the payment secured by bond approved by the  
 35 court, and to be released from all existing liabilities of the  
 36 partnership; but in ascertaining the value of the partner's  
 37 interest the value of the good will of the business shall not be  
 38 considered. \*

323\*#38S

39 323.38 ADJUSTMENT OF RIGHTS ON DISSOLUTION FOR FRAUD.

40 Where a partnership contract is rescinded on the ground of  
 41 the fraud or misrepresentation of one of the partners thereto,  
 42 the party entitled to rescind is, without prejudice to any other  
 43 right, entitled:

44 (1) To a lien on, or right of retention of, the surplus of  
 45 the partnership property after satisfying the partnership  
 46 liabilities to third persons for any sum of money paid by ~~him~~  
 47 the rescinder for the purchase of an interest in the partnership  
 48 and for any capital or advances contributed by ~~him~~ the  
 49 rescinder; and \*

50 (2) To stand, after all liabilities to third persons have  
 51 been satisfied, in the place of the creditors of the partnership  
 52 for any payments made by ~~him~~ the rescinder in respect of the  
 53 partnership liabilities; and \*

54 (3) To be indemnified by the person guilty of the fraud or  
 55 making the representation against all debts and liabilities of  
 56 the partnership.

323\*#39S

57 323.39 DISTRIBUTION ON DISSOLUTION.

58 In settling accounts between the partners after  
 59 dissolution, the following rules shall be observed, subject to  
 60 any agreement to the contrary:

61 (1) The assets of the partnership are:

62 (a) The partnership property;

63 (b) The contributions of the partners necessary for the  
 64 payment of all the liabilities specified in clause (2);

65 (2) The liabilities of the partnership shall rank in order  
 66 of payment, as follows:

67 (a) Those owing to creditors other than partners;

68 (b) Those owing to partners other than for capital and  
 69 profits;

70 (c) Those owing to partners in respect to capital;

71 (d) Those owing to partners in respect to profits;

72 (3) The assets shall be applied in the order of their  
 73 declaration in clause (1) to the satisfaction of the liabilities;

74 (4) The partners shall contribute, as provided by section

1 323.17, clause (1), the amount necessary to satisfy the  
2 liabilities; but if any, but not all, of the partners are  
3 insolvent, or, not being subject to process, refuse to  
4 contribute, the other partners shall contribute their share of  
5 the liabilities, and, in the relative proportions in which they  
6 share the profits, the additional amount necessary to pay the  
7 liabilities;

8 (5) An assignee for the benefit of creditors of any person  
9 appointed by the court shall have the right to enforce the  
10 contributions specified in clause (4);

11 (6) Any partner or his the partner's legal representative \*  
12 shall have the right to enforce the contributions specified in \*  
13 clause (4), to the extent of the amount ~~which he has~~ paid in \*  
14 excess of his that partner's share of the liability;

15 (7) The individual property of a deceased partner shall be  
16 liable for the contributions specified in clause (4);

17 (8) When partnership property and the individual properties  
18 of the partners are in the possession of a court for  
19 distribution, partnership creditors shall have priority on  
20 partnership property and separate creditors on individual  
21 property, saving the rights of lien or secured creditors as  
22 heretofore;

23 (9) Where a partner has become bankrupt or his the \*  
24 partner's estate is insolvent, the claims against his the \*  
25 partner's separate property shall rank in the following order: \*

- 26 (a) Those owing to separate creditors;
- 27 (b) Those owing to partnership creditors; and
- 28 (c) Those owing to partners by way of contribution.

323\*#40S

29 323.40 LIABILITY OF PERSONS CONTINUING THE BUSINESS IN  
30 CERTAIN CASES.

31 Subdivision 1. ADMISSION. When any new partner is  
32 admitted into an existing partnership, or when any partner  
33 retires and assigns, or the representative of the deceased  
34 partner assigns, his the partner's rights in partnership \*  
35 property to two or more of the partners, or to one or more of  
36 the partners and one or more third persons, if the business is  
37 continued without liquidation of the partnership affairs,  
38 creditors of the first or dissolved partnership are also  
39 creditors of the partnership so continuing in the business.

40 No change for subd 2

41 Subd. 3. CONTINUATION ON RETIREMENT OR DEATH. When  
42 any partner retires or dies and the business of the dissolved  
43 partnership is continued, as set forth in subdivisions 1 and 2,  
44 with the consent of the retired partners or the representative  
45 of the deceased partner, but without any assignment of his the \*  
46 partner's right in partnership property, rights of creditors of \*  
47 the dissolved partnership and of the creditors of the person or  
48 partnership continuing the business shall be as if such  
49 assignment had been made.

50 No change for subd 4 to 7

51 Subd. 8. RIGHTS OF CREDITORS. When the business of  
52 a partnership after dissolution is continued under any  
53 conditions set forth in this section, the creditors of the  
54 dissolved partnership, as against the separate creditors of the  
55 retiring or deceased partner or the representative of the  
56 deceased partner, have a prior right to any claim of the retired  
57 partner or the representative of the deceased partner against  
58 the person or partnership continuing the business, on account of  
59 the retired or deceased partner's interest in the dissolved  
60 partnership or on account of any consideration promised for such  
61 interest or for his the retired or deceased partner's right in \*  
62 partnership property.

63 No change for subd 9 to 10

323\*#41S

64 323.41 RIGHTS OF RETIRING OR ESTATE OF DECEASED PARTNER  
65 WHEN THE BUSINESS IS CONTINUED.

66 When a partner retires or dies, and the business is  
67 continued under any of the conditions set forth in section  
68 323.40, subdivisions 1, 2, 3, 5, and 6, or section 323.37,  
69 subdivision 2, clause (2), without any settlement of accounts as  
70 between him the partner or his that partner's estate and the \*  
71 person or partnership continuing the business, unless otherwise \*  
72 agreed, he the partner or his the partner's legal representative \*  
73 as against such persons or partnership, may have the value \*  
74 of his the partner's interest at the date of dissolution \*

1 ascertained, and shall receive as an ordinary creditor an amount  
 2 equal to the value of ~~his~~ that interest in the dissolved  
 3 partnership, with interest, or, ~~at his option or at the option~~  
 4 ~~of his legal representative~~ the option, in lieu of interest, of  
 5 the profits attributable to the use of ~~his~~ the partner's right  
 6 in the property of the dissolved partnership; provided, that the  
 7 creditors of the dissolved partnership as against the separate  
 8 creditors, or the representative of the retired or deceased  
 9 partner, shall have priority on any claim arising under this  
 10 section, as provided by section 323.40, subdivision 8.

323\*#42S

11 323.42 RIGHT TO ACCOUNTING ACCRUES ON DISSOLUTION.

12 The right to an account of ~~his~~ that partner's interest  
 13 shall accrue to any partner, or ~~his~~ the partner's legal  
 14 representative, as against the winding up partners or the  
 15 surviving partners or the person or partnership continuing the  
 16 business, at the date of dissolution, in the absence of any  
 17 agreement to the contrary.

324\*#01S

18 324.01 DEFINITIONS.

19 No change for subd 1

20 Subd. 2. ARTIST. "Artist" means the creator of a  
 21 work of art or, if ~~he or she~~ that person is deceased, that  
 22 ~~person's~~ the heirs or personal representatives of the creator of  
 23 a work of art.

24 No change for subd 3 to 6

324\*#08S

25 324.08 ACTS PROHIBITED; DISCLOSURE STATEMENTS.

26 No change for subd 1 to 3

27 Subd. 4. SALES DISCLAIMER. If the seller disclaims  
 28 knowledge as to any relevant detail referred to in section  
 29 324.09, ~~he or she~~ the seller shall so state the information is  
 30 unknown or not available. Describing the print as a  
 31 "reproduction" eliminates the need to furnish information  
 32 details unless it was allegedly published in a numbered, or  
 33 limited edition, and signed by the artist, in which case all of  
 34 the informational details are required to be furnished.

325A#02S

35 325A.02 NOTICE TO CUSTOMERS.

36 Subdivision 1. Every contract for invention development  
 37 services shall be in writing and shall be subject to the  
 38 provisions of sections 325A.01 to 325A.10. A copy of each fully  
 39 executed, written contract shall be given to the customer at the  
 40 time ~~he~~ the customer signs the contract.

41 No change for subd 2

325A#03S

42 325A.03 RIGHT OF CANCELLATION.

43 No change for subd 1

44 Subd. 2. Every contract for invention development services  
 45 shall contain the following statement in 10-point boldface type  
 46 immediately above the place where the customer signs the  
 47 contract:

48 "The three business day period during which you may cancel  
 49 this contract for any reason by mailing or delivering written  
 50 notice to the invention developer will expire on (last date to  
 51 mail or deliver notice). If you choose to mail your notice, it  
 52 must be placed in the United States mail addressed to (Name of  
 53 Invention Developer), at (Address of Invention Developer's Place  
 54 of Business) with first class postage prepaid before midnight of  
 55 this date. If you choose to personally deliver your notice to  
 56 the invention developer, it must be delivered ~~to him~~ by the end  
 57 of ~~his~~ the developer's normal business day on this date."

325A#04S

58 325A.04 MANDATORY CONTRACT FORM.

59 No change for subd 1

60 Subd. 2. The following disclosure statement shall be in  
 61 boldface type and shall be located conspicuously on a cover  
 62 sheet that contains no other writing:

63 "The following disclosures are required by law and are  
 64 expressly made a part of this contract: You have the right to  
 65 cancel this contract for any reason at any time within three  
 66 business days from the date you and the invention developer sign  
 67 the contract and you receive a fully executed copy of it. To  
 68 exercise this option you need only mail or personally deliver to  
 69 this invention developer written notice of your cancellation.  
 70 The method and time for notification is set forth in this



1 contract immediately above the place for your signature. Upon  
2 cancellation, the invention developer must return by mail or  
3 personal delivery, within ten business days after receipt of the  
4 cancellation notice, all money paid and all materials provided  
5 either by you or by another party in your behalf.

6 ~~Unless the invention developer is a lawyer, he is NOT~~ \*  
7 ~~permitted to give you legal advice concerning patent, copyright~~ \*  
8 ~~or trademark law or to advise you of whether your idea or~~ \*  
9 ~~invention may be patentable or may be protected under the~~ \*  
10 ~~patent, copyright or trademark laws of the United States or any~~ \*  
11 ~~other law. An invention developer who is also a lawyer may give~~ \*  
12 ~~you legal advice concerning patent, copyright, or trademark law~~ \*  
13 ~~or advise you of whether your idea or invention may be~~ \*  
14 ~~patentable or may be protected under the patent, copyright, or~~ \*  
15 ~~trademark laws of the United States or any other law. An~~ \*  
16 ~~invention developer who is not a lawyer may not give you legal~~ \*  
17 ~~advice on these subjects.~~ \*

18 No patent, copyright or trademark protection will be  
19 acquired for you by the invention developer or by this  
20 contract. Your failure to inquire into the law governing  
21 patent, copyright or trademark matters may jeopardize your  
22 rights in your idea or invention both in the United States and  
23 in foreign countries. Your failure to identify and investigate  
24 existing patents, trademarks or registered copyrights may place  
25 you in jeopardy of infringing the copyrights, patent or  
26 trademark rights of other persons if you proceed to make, use,  
27 distribute or sell your idea or invention."

28 No change for subd 3 to 9

29 Subd. 10. The contract shall state that the records and  
30 correspondence required to be maintained pursuant to section  
31 325A.08 will be made available to the customer or ~~his~~ the \*  
32 customer's representative for review and copying at the \*  
33 customer's expense on the invention developer's premises during \*  
34 normal business hours upon seven days' written notice, the time \*  
35 period to begin from the date the notice is placed in the United \*  
36 States mail properly addressed and first class postage prepaid.

37 No change for subd 11 to 12

325A#05S

38 325A.05 DISCLOSURES MADE PRIOR TO CONTRACT.

39 No change for subd 1 to 3

40 Subd. 4. The disclosure shall contain the following  
41 statement:

42 ~~"Unless the invention developer is a lawyer, he is NOT~~ \*  
43 ~~permitted to give you legal advice concerning patent, copyright~~ \*  
44 ~~or trademark law or to advise you of whether your idea or~~ \*  
45 ~~invention may be patentable or may be protected under the~~ \*  
46 ~~patent, copyright or trademark laws of the United States or any~~ \*  
47 ~~other law. An invention developer who is also a lawyer may give~~ \*  
48 ~~you legal advice concerning patent, copyright, or trademark law~~ \*  
49 ~~or to advise you of whether your idea or invention may be~~ \*  
50 ~~patentable or may be protected under the patent, copyright, or~~ \*  
51 ~~trademark laws of the United States or any other law. An~~ \*  
52 ~~invention developer who is not a lawyer may not give you legal~~ \*  
53 ~~advice on these subjects.~~ \*

54 No patent, copyright or trademark protection will be  
55 acquired for you by the invention developer. Your failure to  
56 inquire into the law governing patent, copyright or trademark  
57 matters may jeopardize your rights in your idea or invention,  
58 both in the United States and in foreign countries. Your  
59 failure to identify and investigate existing patents, trademarks  
60 or registered copyrights may place you in jeopardy of infringing  
61 the copyrights, patent or trademark rights of other persons if  
62 you proceed to make, use, distribute or sell your idea or  
63 invention."

325A#07S

64 325A.07 RESTRICTION ON USE OF NEGOTIABLE INSTRUMENTS.

65 In connection with a contract for invention development  
66 services, the invention developer shall not take from a customer  
67 a negotiable instrument other than a check as evidence of the  
68 obligation of the customer. A holder is not a holder in due \*  
69 course if ~~he~~ the holder takes a negotiable instrument taken from \*  
70 a customer in violation of this section.

325A#09S

71 325A.09 REMEDIES AND ENFORCEMENT.

72 No change for subd 1

73 Subd. 2. Any contract for invention development services

1 that does not comply with the applicable provisions of sections  
 2 325A.01 to 325A.10 shall be unenforceable against the customer  
 3 as contrary to public policy, provided that no contract shall be  
 4 unenforceable if the invention developer proves that  
 5 noncompliance was unintentional and resulted from a bona fide  
 6 error in spite of ~~his use of~~ reasonable procedures adopted to  
 7 avoid any such errors, and if ~~he~~ the invention developer makes  
 8 an appropriate correction.

9 No change for subd 3 to 7

## 325B#02S

10 325B.02 NO INDUCEMENT OR COERCION.

11 No brewer shall:

12 (1) Induce or coerce, or attempt to induce or coerce, any  
 13 beer wholesaler to accept delivery of any alcoholic beverage or  
 14 any other commodity which shall not have been ordered by the  
 15 beer wholesaler.

16 (2) Induce or coerce, or attempt to induce or coerce, any  
 17 beer wholesaler to do any illegal act or thing by threatening to  
 18 amend, cancel, terminate, or refuse to renew any agreement  
 19 existing between a brewer and a beer wholesaler.

20 (3) Require a wholesaler to assent to any condition,  
 21 stipulation or provision limiting the ~~wholesaler-in-his~~  
 22 wholesaler's right to sell the product of any other brewer  
 23 anywhere in the state of Minnesota, provided that the  
 24 acquisition of the product of another brewer does not materially  
 25 impair the quality of service or quantity of sales of the  
 26 existing brand or brands of the brewer seeking to impose the  
 27 condition, stipulation or provision.

## 325B#04S

28 325B.04 CANCELLATION.

29 Notwithstanding the terms, provisions or conditions of any  
 30 agreement, no brewer shall amend, cancel, terminate or refuse to  
 31 continue to renew any agreement, or cause a wholesaler to resign  
 32 from an agreement, unless good cause exists for amendment,  
 33 termination, cancellation, nonrenewal, noncontinuation or  
 34 causing a resignation. "Good cause" shall not include the sale  
 35 or purchase of a brewer. "Good cause" shall include, but not be  
 36 limited to, the following:

37 (1) Revocation of the wholesaler's license to do business  
 38 in the state.

39 (2) Bankruptcy or insolvency of the wholesaler.

40 (3) Assignment for the benefit of creditors or similar  
 41 disposition of the assets of the wholesaler.

42 (4) Failure by the wholesaler to substantially comply,  
 43 without reasonable excuse or justification, with any reasonable  
 44 and material requirement imposed upon ~~him~~ the wholesaler by the  
 45 brewer.

## 325B#14S

46 325B.14 OBLIGATIONS OF PURCHASER.

47 Except for good cause, which shall include, but not be  
 48 limited to (1) revocation of the wholesaler's license to do  
 49 business in the state, (2) bankruptcy or insolvency of the  
 50 wholesaler, (3) assignment for the benefit of creditors or  
 51 similar disposition of the assets of the wholesaler, (4) failure  
 52 by the wholesaler to substantially comply, without reasonable  
 53 excuse or justification, with any reasonable and material  
 54 requirement imposed upon ~~him~~ the wholesaler by the brewery, the  
 55 purchaser of a "brewer" as defined in sections 325B.01 to  
 56 325B.17 shall become obligated to all of the terms and  
 57 conditions of the agreement in effect on the date of purchase.  
 58 "Purchase", as defined for the purposes of sections 325B.01 to  
 59 325B.17, shall include, but is not limited to, the sale of  
 60 stock, sale of assets, merger, lease, transfer or consolidation.

## 325C#01S

61 325C.01 DEFINITIONS.

62 No change for subd 1 to 2

63 Subd. 3. "Misappropriation" means:

64 (i) acquisition of a trade secret of another by a person  
 65 who knows or has reason to know that the trade secret was  
 66 acquired by improper means; or

67 (ii) disclosure or use of a trade secret of another without  
 68 express or implied consent by a person who

69 (A) used improper means to acquire knowledge of the trade  
 70 secret; or

71 (B) at the time of disclosure or use, knew or had reason to  
 72 know that ~~his~~ the discloser's or user's knowledge of the trade

1 secret was

2 (I) derived from or through a person who had utilized  
3 improper means to acquire it;

4 (II) acquired under circumstances giving rise to a duty to  
5 maintain its secrecy or limit its use; or

6 (III) derived from or through a person who owed a duty to  
7 the person seeking relief to maintain its secrecy or limit its  
8 use; or

9 (C) before a material change of ~~his~~ the discloser's or \*  
10 user's position, knew or had reason to know that it was a trade \*  
11 secret and that knowledge of it had been acquired by accident or  
12 mistake.

13 No change for subd 4 to 5

325D#06S

14 325D.06 INAPPLICABLE SALES.

15 The provisions of section 325D.01, subdivisions 2 to 6, and  
16 sections 325D.04 and 325D.05 shall not apply to any sale made:

17 (1) In closing out in good faith the owner's stock, or any \*  
18 part thereof, for the purpose of discontinuing ~~his~~ trade in any  
19 such stock or commodity, and in case of the sale of seasonal  
20 goods or merchandise where style is the paramount feature or to  
21 the bona fide sale of perishable goods to prevent loss to the  
22 vendor by spoilage or depreciation, provided notice is given to  
23 the public thereof;

24 (2) When the goods are damaged or deteriorated in quality,  
25 and notice is given to the public thereof;

26 (3) By an officer acting under the orders of any court;

27 (4) In an endeavor made in good faith to meet the legal  
28 prices of a competitor selling the same commodity, articles,  
29 goods, wares, or merchandise in the same locality or trade area.

30 The price of a retail competitor which is less than eight \*  
31 percent above the manufacturer's published list price less ~~his~~  
32 published trade discounts where the manufacturer publishes a  
33 list price, or in the absence of such a list price less than  
34 eight percent above the actual current delivered invoice or  
35 replacement cost without deducting customary cash discounts plus  
36 the amount of any excise or sales tax shall be prima facie  
37 evidence that it is not a legal price, within the meaning of  
38 this section.

39 The price of a wholesale or sub-jobbing competitor to a  
40 retailer, which is less than two percent above the  
41 manufacturer's published list price less ~~his~~ published trade \*  
42 discounts where the manufacturer publishes a list price, or in  
43 the absence of such a list price less than two percent above the  
44 actual current delivered invoice or replacement cost without  
45 deducting customary cash discounts plus the amount of any excise  
46 or sales tax shall be prima facie evidence that it is not a  
47 legal price, within the meaning of this section.

48 Any retailer, wholesaler, sub-jobber or vending machines  
49 operator may request the attorney general to ascertain and  
50 disclose to ~~him~~ the person making the request, the current \*  
51 manufacturer's published list price less published trade  
52 discounts on any commodity, article, goods, wares, or  
53 merchandise, and it shall then be the duty of the attorney  
54 general, within 48 hours of such request, to ascertain and  
55 disclose to the person making such request, the current  
56 manufacturer's published list price less published trade  
57 discounts.

58 Failure to make such request by any person before reducing  
59 ~~his~~ price on any commodity, article, goods, wares, or \*  
60 merchandise below ~~his~~ cost shall be prima facie evidence of not \*  
61 acting in good faith within the meaning of this paragraph.

325D#08S

62 325D.08 SALES PRIMA FACIE EVIDENCE OF VIOLATION; DENIAL  
63 OF LEGAL OR EQUITABLE RELIEF.

64 Any sale made by the retail vendor at less than eight \*  
65 percent above the manufacturer's published list price, less ~~his~~  
66 published trade discounts, where the manufacturer publishes a  
67 list price; or, in the absence of such list price, at less than  
68 eight percent above the actual current delivered invoice or  
69 replacement cost, without deducting customary cash discounts,  
70 plus, in either case, the amount of any excise or sales tax  
71 imposed on such merchandise subsequent to the purchase thereof  
72 and prior to the resale thereof, for the purpose or with the  
73 effect of injuring a competitor or destroying competition, shall  
74 be prima facie evidence of the violation of sections 325D.02 to

1 325D.07.

2 No prosecution shall be had nor any action at law for  
3 damages or injunctive relief shall lie where the vendor sells at  
4 a price not less than 15 percent above the manufacturer's  
5 published list price, less ~~his~~ published trade discounts, where \*  
6 the manufacturer publishes a list price; or, in the absence of  
7 such a list price, at not less than 15 percent above the current  
8 delivered invoice or replacement cost, without deducting  
9 customary cash discounts, plus, in either case, the amount of  
10 any excise or sales tax imposed on such merchandise subsequent  
11 to the purchase thereof and prior to the resale thereof.

12 Any sale made by a wholesale vendor, or a sub-jobber to a  
13 retailer at less than two percent above the manufacturer's \*  
14 published list price, less ~~his~~ published trade discounts, where  
15 the manufacturer publishes a list price; or, in the absence of  
16 such a list price, at less than two percent above the actual  
17 current delivered invoice or replacement cost, without deducting  
18 customary cash discounts, plus, in either case, the amount of  
19 any excise or sales tax imposed on such merchandise subsequent  
20 to the purchase thereof and prior to the resale thereof, for the  
21 purpose or with the effect of injuring a competitor or  
22 destroying competition, shall be prima facie evidence of the  
23 violation of sections 325D.02 to 325D.07.

24 Any sale made by a wholesaler to another wholesaler,  
25 sub-jobber or vending machines operator at less than the \*  
26 manufacturer's published list price less ~~his~~ published trade  
27 discounts, where the manufacturer publishes a list price; or, in  
28 the absence of such a list price, at less than the actual  
29 current delivered invoice or replacement cost, without deducting  
30 customary cash discounts, plus, in either case, the amount of  
31 any excise or sales tax imposed on such merchandise subsequent  
32 to the purchase thereof and prior to the resale thereof, for the  
33 purpose or with the effect of injuring a competitor or  
34 destroying competition, shall be prima facie evidence of the  
35 violation of sections 325D.02 to 325D.07.

325D#09S

36 325D.09 UNLAWFUL TRADE PRACTICES.

37 The legislature of the state of Minnesota hereby finds:  
38 that the trade practices defined and prohibited by sections  
39 325D.09 to 325D.16 are detrimental to labor, destructive to  
40 employment, and injurious to the best interests of  
41 ~~workingmen~~ workers; that they mislead ~~the-consumer~~ consumers \*  
42 into believing that ~~he-is~~ they are buying merchandise at prices \*  
43 substantially below regular retail prices, when in fact ~~he-is~~ \*  
44 they are not; that they mislead ~~the-consumer~~ consumers as to the \*  
45 quality, ingredients and origin of merchandise purchased ~~by-him~~; \*  
46 that they deprive ~~the-consumer~~ consumers of various customer \*  
47 services offered by regularly established and bona fide retail \*  
48 outlets without compensating advantage to ~~the-consumer~~ \*  
49 consumers; and that they constitute unfair and fraudulent \*  
50 competition and unsound and uneconomic methods of distribution.  
51 The legislature, acting in the exercise of the police power of  
52 the state, declares that the public policy of the state  
53 requires, and that the general welfare of the state will be  
54 benefited by, the suppression of the trade practices hereinafter  
55 defined.

325D#14S

56 325D.14 EMPLOYER NOT TO DISPOSE OF OTHER THAN OWN  
57 PRODUCTS.

58 No employer shall, directly or indirectly, by itself or  
59 through a subsidiary agency owned or controlled in whole or in  
60 part by such employer, sell, cause to be sold, or ~~have-in-his~~ \*  
61 ~~possession~~ possess or ~~under-his~~ control for sale to ~~his~~ \*  
62 employees or to any other person, any merchandise not handled by  
63 such employer in the regular course of ~~his~~ business, nor shall \*  
64 any employer permit ~~his~~ the employer's name, ~~his~~ credit, or ~~his~~ \*  
65 premises to be used in connection with the sale or offer for  
66 sale of any such merchandise. This section shall not apply to  
67 purchases by an employer for the purpose of re-sale to ~~his~~ \*  
68 employees of such specialized equipment and paraphernalia as may  
69 be required for employees' safety and health, candy, chewing  
70 gum, tobacco, or meals consumed on the premises of such  
71 employer. The provisions of sections 325D.09 to 325D.16 shall  
72 not apply to any cooperative associations, duly established  
73 under the laws of the state of Minnesota, with respect to any  
74 merchandising transactions, which such cooperatives are

1 authorized by their charters to conduct with their members.

325D#15S

2 325D.15 VIOLATIONS; RESTRAINING ORDERS.

3 Any person violating the provisions of sections 325D.09 to  
4 325D.16 shall be deemed guilty of a misdemeanor. Each act  
5 prohibited by sections 325D.09 to 325D.16 shall constitute a  
6 separate violation and offense thereunder.

7 In addition to the penalties provided in sections 325D.09  
8 to 325D.16 the courts of this state are hereby vested with  
9 jurisdiction to prevent and restrain violation of sections  
10 325D.09 to 325D.16. Any person damaged or who is threatened  
11 with loss, damage, or injury by reason of a violation of  
12 sections 325D.09 to 325D.16 shall be entitled to sue for and  
13 have injunctive relief in any court of competent jurisdiction  
14 against any damage or threatened loss or injury by reason of a  
15 violation of sections 325D.09 to 325D.16 and for the amount of  
16 the actual damages ~~to him~~, if any. In order to obtain such \*  
17 injunctive relief, it shall not be necessary to allege or prove  
18 that an adequate remedy at law does not exist.

325D#16S

19 325D.16 APPLICATION.

20 Nothing in sections 325D.09 to 325D.16 shall be deemed to  
21 prohibit the sale by an employer to ~~his~~ employees of ~~his~~ the  
22 employer's own products or property at any price. \*

325D#32S

23 325D.32 DEFINITIONS.

24 No change for subd 1 to 8

25 Subd. 9. "Basic cost of cigarettes" means the gross  
26 invoice cost of cigarettes to the wholesaler or retailer plus  
27 the full face value of any stamps which may be required by any  
28 cigarette tax act of this state, unless included by the  
29 manufacturer in ~~his~~ the list price. \*

30 No change for subd 10

31 Subd. 11. (1) "Cost of the retailer" means the basic cost  
32 of the cigarettes involved to the retailer plus the cost of  
33 doing business by the retailer as defined in sections 325D.30 to  
34 325D.42.

35 (2) The cost of doing business by the said retailer is  
36 presumed to be eight percentum of the basic cost of cigarettes  
37 in the absence of proof of a lesser or a higher cost.

38 (3) If any retailer in connection with ~~his~~ the purchase of \*  
39 any cigarettes shall receive the discounts ordinarily allowed  
40 upon purchases by a retailer and in whole or in part discounts  
41 ordinarily allowed upon purchases by a wholesaler, the cost of  
42 doing business by the retailer with respect to the said  
43 cigarettes shall be, in the absence of a lesser or a higher cost  
44 of doing business, the sum of the cost of doing business by the  
45 retailer and, to the extent that ~~he~~ the retailer shall have \*  
46 received the full discounts allowed to a wholesaler, the cost of  
47 doing business by a wholesaler as defined in subdivision 10,  
48 clause (2).

49 Subd. 12. "Subjobber" means any person who buys stamped  
50 cigarettes and sells them to persons other than ultimate  
51 consumers, and any licensed distributor who delivers to and  
52 sells or distributes stamped cigarettes from a place of business  
53 other than that for which ~~he~~ the distributor has obtained ~~his~~ a \*  
54 distributor's license; who does not use a distributor's license  
55 for any plan or scheme to circumvent the Minnesota unfair  
56 cigarette sales act or any other law relating to the sale of  
57 cigarettes, who does not use such subjobber's license for the  
58 principal purpose of selling cigarettes to retail cigarette  
59 licensees in which such subjobber has an ownership interest, and  
60 who sells at least 75 percent of ~~his~~ total cigarette volume to \*  
61 retail outlets in which the subjobber has no more than a ten  
62 percent ownership interest, directly or indirectly, and who  
63 sells to at least 25 retail customers. Notwithstanding the  
64 foregoing, "subjobber" shall also mean any person who is a  
65 vending machine operator. A vending machine operator is any  
66 person whose principal business is operating, or owning and  
67 leasing to operators, machines for the vending of merchandise or  
68 service.

325D#33S

69 325D.33 SALES AT LESS THAN COST; PENALTY.

70 No change for subd 1

71 Subd. 2. Evidence of advertisement, offering to sell or  
72 sale of cigarettes by any wholesaler, subjobber or retailer at

1 less than cost ~~to him~~ as defined by sections 325D.30 to 325D.42 \*  
2 shall be prima facie evidence of a violation of sections 325D.30  
3 to 325D.42 in civil cases.

## 325D#34S

## 4 325D.34 COMBINATION SALES.

5 In all offers for sale or sales involving cigarettes and  
6 any other item at a combined price and in all offers for sale,  
7 or sales, involving the giving of any gift or concession of any  
8 kind whatsoever, and which are not given by the wholesaler or  
9 retailer with all sales made ~~by him~~ in the ordinary course of \*  
10 ~~his~~ trade or business, the wholesaler's or retailer's combined \*  
11 selling price shall not be below the cost to the wholesaler or  
12 the cost to the retailer, respectively, of the total of all  
13 articles, products, commodities, gifts, and concessions included  
14 in such transactions, except that if any such articles,  
15 products, commodities, gifts or concessions, shall not be  
16 cigarettes, the basic cost thereof shall be determined in like  
17 manner as provided in section 325D.32, subdivision 9.

## 325D#35S

## 18 325D.35 SALES BY A WHOLESALER TO A WHOLESALER.

19 When one wholesaler sells cigarettes to any other  
20 wholesaler, the former shall not be required to include in ~~his~~ \*  
21 the selling price to the latter, the cost of doing business to \*  
22 the wholesaler, as defined by section 325D.32, but the latter  
23 wholesaler, upon resale to a retailer, shall be subject to the  
24 provisions of the said section.

## 325D#40S

## 25 325D.40 REMEDIES; SALES OF GOVERNMENT AGENCIES.

26 Subdivision 1. Any corporation, partnership, trade  
27 association, or any person or persons who would suffer injury  
28 from any threatened violation of sections 325D.30 to 325D.42 may  
29 maintain an action to enjoin such actual or threatened violation  
30 and proof of actual damages need not be alleged or proved in  
31 cases of threatened violation. If a violation or threatened  
32 violation of the Minnesota unfair cigarette sales act shall be  
33 established, the court shall enjoin such violator or threatened  
34 violator, and, in addition thereto, the court shall assess in  
35 favor of the plaintiff and against defendant the injuries of the  
36 suit including reasonable attorneys fees. Where alleged and  
37 proved, the plaintiff, in addition to such injunctive relief and  
38 cost of suit including reasonable attorneys fees, shall be  
39 entitled to recover from defendant the actual damages sustained  
40 ~~by him~~. \*

41 No change for subd 2

## 325D#43S

## 42 325D.43 DEFINITIONS.

43 No change for subd 1 to 7

44 Subd. 8. "Trade name" means a word, name, symbol, device,  
45 or any combination of the foregoing in any form or arrangement  
46 used by a person to identify ~~his~~ the person's business, \*  
47 vocation, or occupation and distinguish it from the business,  
48 vocation, or occupation of others.

## 325D#44S

## 49 325D.44 DECEPTIVE TRADE PRACTICES.

50 Subdivision 1. A person engages in a deceptive trade  
51 practice when, in the course of ~~his~~ business, vocation, or \*  
52 occupation, ~~he~~ the person: \*

53 (1) passes off goods or services as those of another;

54 (2) causes likelihood of confusion or of misunderstanding  
55 as to the source, sponsorship, approval, or certification of  
56 goods or services;

57 (3) causes likelihood of confusion or of misunderstanding  
58 as to affiliation, connection, or association with, or  
59 certification by, another;

60 (4) uses deceptive representations or designations of  
61 geographic origin in connection with goods or services;

62 (5) represents that goods or services have sponsorship,  
63 approval, characteristics, ingredients, uses, benefits, or  
64 quantities that they do not have or that a person has a  
65 sponsorship, approval, status, affiliation, or connection that  
66 ~~he~~ the person does not have; \*

67 (6) represents that goods are original or new if they are  
68 deteriorated, altered, reconditioned, reclaimed, used, or  
69 secondhand;

70 (7) represents that goods or services are of a particular  
71 standard, quality, or grade, or that goods are of a particular

1 style or model, if they are of another;  
 2 (8) disparages the goods, services, or business of another  
 3 by false or misleading representation of fact;  
 4 (9) advertises goods or services with intent not to sell  
 5 them as advertised;  
 6 (10) advertises goods or services with intent not to supply  
 7 reasonably expectable public demand, unless the advertisement  
 8 discloses a limitation of quantity;  
 9 (11) makes false or misleading statements of fact  
 10 concerning the reasons for, existence of, or amounts of price  
 11 reductions; or  
 12 (12) engages in any other conduct which similarly creates a  
 13 likelihood of confusion or of misunderstanding.

14 No change for subd 2 to 3

325D#45S

15 325D.45 REMEDIES.

16 No change for subd 1

17 Subd. 2. Costs shall be allowed to the prevailing party  
 18 unless the court otherwise directs. The court may award  
 19 attorneys' fees to the prevailing party if (1) the party  
 20 complaining of a deceptive trade practice has brought an action  
 21 ~~which-he-knew~~ knowing it to be groundless, or (2) the party \*  
 22 charged with a deceptive trade practice has willfully engaged in  
 23 the trade practice knowing it to be deceptive.

24 No change for subd 3

325D#53S

25 325D.53 PRICE FIXING; PRODUCTION CONTROL; ALLOCATION OF  
 26 MARKETS; COLLUSIVE BIDDING; AND CONCERTED REFUSALS TO DEAL;  
 27 DISCRIMINATORY ACTS.

28 No change for subd 1

29 Subd. 2. Without limiting section 325D.51, the following,  
 30 when performed by a person within the jurisdiction of this  
 31 state, and directly affecting business in this state (excluding  
 32 any business employing, controlling, controlled by or under  
 33 common control with such person), shall be deemed to restrain  
 34 trade or commerce unreasonably and are unlawful:

35 (1) Requiring any United States person to be excluded from  
 36 a business transaction on the basis of that person's sex, race,  
 37 color, religion, ancestry or national origin or on the basis  
 38 that the person conducts or has conducted business with persons  
 39 of a particular race, sex, color, religion, ancestry or national  
 40 origin, or on the basis that the person has done business in a  
 41 particular country.

42 (2) Giving, as part of any business transaction, any  
 43 statement, certification or other document to the effect that  
 44 the giver of the statement, certification or other document has  
 45 complied with a policy imposed by any person, nation, or  
 46 international organization requiring exclusion from any business  
 47 transaction, or discrimination against, any United States person  
 48 on the basis of ~~his~~ race, sex, color, religion, ancestry or \*  
 49 national origin or on the basis that the person conducts or has  
 50 conducted business with persons of a particular race, sex,  
 51 color, religion, ancestry or national origin, or on the basis  
 52 that the person has done business in a particular country.

53 (3) Granting, accepting or processing any letter of credit  
 54 or other document which evidences the transfer of funds or  
 55 credit, or entering into any contract for the exchange of goods  
 56 or services, where the letter of credit, contract, or other  
 57 document contains any provision which requires any person to  
 58 discriminate against or to certify that ~~he~~ the person has not \*  
 59 dealt with any other United States person on the basis of race,  
 60 sex, color, religion, ancestry or national origin, or on the  
 61 basis that the person conducts or has conducted business with  
 62 persons of a particular race, sex, color, religion, ancestry or  
 63 national origin, or on the basis that the person has done  
 64 business in a particular country.

65 (4) As part of any business transaction, complying, or  
 66 agreeing to comply, or certifying or giving other assurance ~~that~~ \*  
 67 ~~he-complies-or-agrees~~ of compliance or agreement to comply, with \*  
 68 a policy imposed by another party requiring discrimination  
 69 against, or refusal to deal with, any United States person,  
 70 group of United States persons, or list of United States  
 71 persons, on the basis of race, sex, color, religion, ancestry or  
 72 national origin or on the basis that the person, group of  
 73 persons or list of persons conducts or has conducted business  
 74 with persons of a particular race, sex, color, religion,

1 ancestry or national origin, or on the basis that the person has  
2 done business in a particular country.

3 Provided, however, that the provisions of subdivisions 2  
4 and 3 shall not apply to (a) any letter of credit, contract, or  
5 other document which contains any provisions pertaining to a  
6 labor dispute or an unfair labor practice if the other  
7 provisions of such letter of credit, contract, or other document  
8 do not violate the provisions of subdivisions 2 and 3; (b) the  
9 requiring of association with a particular employer or a  
10 particular group as a requisite to obtaining group rates or  
11 discount on insurance, recreational activities, or other similar  
12 benefits; (c) any act which is an unfair discriminatory practice  
13 under section 363.01, subdivision 9 and for which a remedy is  
14 provided under chapter 363; (d) persons exempted or acts  
15 excepted from the provisions of chapter 363 pursuant to section  
16 363.02; (e) any agreement, letter of credit, contract or other  
17 document which contains any specification as to the country of  
18 origin of goods or services sold in a business transaction, or  
19 as to the vessels to carry the goods, or the route by which the  
20 goods may be shipped, if the other provisions of such agreement,  
21 letter of credit, contract, or other document do not violate the  
22 provisions of subdivisions 2 and 3; (f) compliance by a person  
23 resident in a foreign country, or agreement by such person to  
24 comply, with the export laws of that country with respect to  
25 activities exclusively therein; provided further, however, that  
26 the mere ownership of an entity located outside the United  
27 States by a person within the jurisdiction of this state shall  
28 not make such entity a person within the jurisdiction of this  
29 state.

30 The exemption contained in section 325D.55, subdivision 2  
31 shall not apply to actions made unlawful under this  
32 subdivision. Provided, however, that the provisions of this  
33 subdivision shall not apply to any action made lawful by  
34 legislation of the United States of America or executive order  
35 of the President of the United States of America which  
36 affirmatively preempts the provisions of subdivisions 2 and 3.

37 No change for subd 3

325D#59S

38 325D.59 AUTHORITY OF THE ATTORNEY GENERAL.

39 The attorney general may investigate any alleged violation  
40 of sections 325D.49 to 325D.66 and ~~if he has~~, having reasonable \*  
41 cause to believe that a violation is imminent, is occurring or \*  
42 has occurred, ~~he~~ the attorney general may institute on behalf of  
43 the state of Minnesota, any of its departments and agencies, or  
44 any of its political subdivisions a court action seeking  
45 appropriate relief. The investigatory authority of the attorney  
46 general under sections 325D.49 to 325D.66 shall include, but not  
47 be limited to, the authority provided for in section 8.31.

325D#67S

48 325D.67 PETROLEUM.

49 No change for subd 1 to 4

50 Subd. 5. DUTY OF ATTORNEY GENERAL. If complaint  
51 shall be made that any corporation authorized to do business in  
52 this state is guilty of unfair discrimination, within the terms  
53 of subdivisions 1 to 8, it shall be the duty of the attorney  
54 general to review the complaint and if the facts justify it in  
55 ~~his~~ the attorney general's judgment, institute proceedings in \*  
56 the courts against such corporation.

57 No change for subd 6 to 8

325D#69S

58 325D.69 VIOLATIONS; PENALTIES.

59 No change for subd 1

60 Subd. 2. MISDEMEANORS. Any person, firm, or  
61 corporation, whether as principal, agent, officer, or director,  
62 for ~~himself~~, ~~or~~ itself, or for another person, firm, or \*  
63 corporation, wilfully violating the provisions of sections  
64 325D.03, 325D.04, 325D.05 and 325D.08 shall be guilty of a  
65 misdemeanor.

66 Any person who, either as director, officer, or agent of  
67 any firm or corporation or as agent of any person violating the  
68 provisions of sections 325D.03, 325D.04, 325D.05 and 325D.08,  
69 knowingly assists or aids directly or indirectly in such  
70 violation shall be equally responsible therefor ~~equally with the~~ \*  
71 ~~person, firm, or corporation for whom or which he acts.~~ \*

325D#70S

72 325D.70 INJUNCTIVE RELIEF.



1 In addition to the penalties provided in section 325D.69,  
 2 subdivision 2, the courts of this state are hereby vested with  
 3 jurisdiction to prevent and restrain violations of sections  
 4 325D.02 to 325D.07. Any person, partnership, corporation, or  
 5 association damaged, or who is threatened with loss or injury,  
 6 by reason of a violation of these sections shall be entitled to  
 7 sue for and have injunctive relief in any court of competent  
 8 jurisdiction against any damage or threatened loss or injury by  
 9 reason of a violation thereof and for the amount of the actual  
 10 damages ~~to him~~, if any. In order to obtain such injunctive  
 11 relief it shall not be necessary to allege or prove that an  
 12 adequate remedy at law does not exist.

13 No person shall be excused from attending and testifying or  
 14 from producing books, papers, contracts, agreements, and  
 15 documents in any case or proceedings instituted or brought under  
 16 the provisions of sections 325D.02 to 325D.08, 325D.69, and this  
 17 section, or in obedience to a subpoena, in any such case or  
 18 proceedings, on the ground or for the reason that the testimony  
 19 or evidence, documentary or otherwise, required of ~~him~~ the  
 20 person may tend to criminate ~~him~~ or subject ~~him~~ the person to a  
 21 penalty or forfeiture; but no person shall be prosecuted or  
 22 subjected to any penalty or forfeiture for or on account of any  
 23 transaction, matter, or thing concerning which ~~he~~ the person may  
 24 testify, or produce evidence, documentary or otherwise, in any  
 25 such case or proceedings, or in obedience to a subpoena, in any  
 26 such case or proceedings.

325E#06S

27 325E.06 REPURCHASE OF FARM MACHINERY, IMPLEMENTS,  
 28 ATTACHMENTS AND PARTS UPON TERMINATION OF CONTRACT.

29 Subdivision 1. OBLIGATION TO REPURCHASE. Whenever  
 30 any person, firm, or corporation engaged in the business of  
 31 selling and retailing farm implements and repair parts for farm  
 32 implements enters into a written contract, sales agreement or  
 33 security agreement whereby the retailer agrees with any  
 34 wholesaler, manufacturer, or distributor of farm implements,  
 35 machinery, attachments or repair parts to maintain a stock of  
 36 parts or complete or whole machines, or attachments, and  
 37 thereafter the written contract, sales agreement or security  
 38 agreement is terminated, canceled or discontinued, then the  
 39 wholesaler, manufacturer, or distributor shall pay to the  
 40 retailer or credit to the retailer's account, if the retailer  
 41 has outstanding any sums owing the wholesaler, manufacturer, or  
 42 distributor, unless the retailer should desire and has a  
 43 contractual right to keep such merchandise, a sum equal to 100  
 44 percent of the net cost of all unused complete farm implements,  
 45 machinery and attachments in new condition which have been  
 46 purchased by the retailer from the wholesaler, manufacturer or  
 47 distributor within the 24 months immediately preceding  
 48 notification by either party of intent to cancel or discontinue  
 49 the contract, including transportation charges which have been  
 50 paid by the retailer, or invoiced to retailer's account by the  
 51 wholesaler, manufacturer or distributor and 80 percent of the  
 52 current net prices on repair parts, including superseded parts  
 53 listed in current price lists or catalogs in use by the  
 54 wholesaler, manufacturer or distributor on the date of  
 55 cancellation or discontinuance of the contract, which parts had  
 56 previously been purchased by the retailer from the wholesaler,  
 57 manufacturer, or distributor and are held by the retailer on the  
 58 date of the cancellation or discontinuance of the contract or  
 59 thereafter received by the retailer from the wholesaler,  
 60 manufacturer or distributor. The wholesaler, manufacturer, or  
 61 distributor shall also pay the retailer or credit to ~~his~~ the  
 62 retailer's account a sum equal to five percent of the current  
 63 net price of all parts returned for the handling, packing, and  
 64 loading of the parts back to the wholesaler, manufacturer, or  
 65 distributor unless the wholesaler, manufacturer or distributor  
 66 elects to perform inventorying, packing and loading of the parts  
 67 itself. Upon the payment or allowance of credit to the  
 68 retailer's account of the sum required by this subdivision, the  
 69 title to the farm implements, farm machinery, attachments or  
 70 repair parts shall pass to the manufacturer, wholesaler or  
 71 distributor making the payment or allowing the credit and the  
 72 manufacturer, wholesaler or distributor shall be entitled to the  
 73 possession of the farm implements, machinery, attachments or  
 74 repair parts. However, this section shall not in any way affect  
 75 any security interest which the wholesaler, manufacturer or

1 distributor may have in the inventory of the retailer.

2 Payment required to be made under this subdivision must be  
3 made not later than 90 days from the date the farm implements,  
4 machinery, attachments, and repair parts are returned by the  
5 retailer, and if not by then paid, the amount payable by the  
6 wholesaler, manufacturer, or distributor bears interest at the  
7 rate of 1-1/2 percent per month from the date the contract was  
8 terminated, canceled, or discontinued until the date payment is  
9 received by the retailer.

10 Subd. 2. PROVISIONS OF CONTRACT SUPPLEMENTED. The  
11 provisions of this section shall be supplemental to any  
12 agreement between the retailer and the manufacturer, wholesaler  
13 or distributor covering the return of farm implements,  
14 machinery, attachments and repair parts. The retailer can elect  
15 to pursue either ~~his~~ the retailer's contract remedy or the \*  
16 remedy provided herein, and an election by the retailer to  
17 pursue ~~his~~ the contract remedy shall not bar ~~his~~ the retailer's \*  
18 right to the remedy provided herein as to those farm implements,  
19 machinery, attachments and repair parts not affected by the  
20 contract remedy. Notwithstanding anything contained herein, the  
21 rights of a manufacturer, wholesaler or distributor to charge  
22 back to the retailer's account amounts previously paid or  
23 credited as a discount incident to the retailer's purchase of  
24 goods shall not be affected. Further, any repurchase hereunder  
25 shall not be subject to the provisions of the bulk sales law.

26 No change for subd 3

27 Subd. 4. FAILURE TO PAY SUMS SPECIFIED ON CANCELLATION  
28 OF CONTRACTS; LIABILITY. In the event that any manufacturer,  
29 wholesaler, or distributor of farm implements, machinery,  
30 attachments and repair parts, upon the cancellation of a  
31 contract by either a retailer or such manufacturer, wholesaler  
32 or distributor, fails or refuses to make payment to the dealer  
33 or ~~his~~ the dealer's heir or heirs as required by this section, \*  
34 the manufacturer, wholesaler or distributor shall be liable in a  
35 civil action to be brought by the retailer or ~~his~~ the retailer's \*  
36 heir or heirs for (a) 100 percent of the net cost of the farm  
37 implements, machinery and attachments, (b) transportation  
38 charges which have been paid by the retailer, (c) 80 percent of  
39 the current net price of repair parts, and (d) five percent for  
40 handling, packing and loading, if applicable.

41 No change for subd 5 to 6

325E#09S

42 325E.09 MOTOR FUEL; DISPLAY OF OCTANE RATING AND SALE  
43 PRICE.

44 No change for subd 1 to 4a

45 Subd. 5. It shall be the duty of the county attorney to  
46 receive complaints of violations of this section and to  
47 prosecute the complaints if on the basis of the facts so  
48 reported and of any additional investigation ~~he may initiate, he~~ \*  
49 the county attorney shall be satisfied that a violation of this \*  
50 section has been committed.

51 No change for subd 6 to 8

325E#14S

52 325E.14 PROHIBITED ACTS.

53 No change for subd 1 to 5

54 Subd. 6. Nothing in this section shall prevent the  
55 service, repair, or replacement of an odometer, provided the  
56 mileage indicated thereon remains the same as before the  
57 service, repair, or replacement. Where the odometer is  
58 incapable of registering the same mileage as before such  
59 service, repair, or replacement, the odometer shall be adjusted  
60 to read zero and a written notice shall be attached to the left  
61 door frame of the vehicle by the owner or ~~his~~ an agent \*  
62 specifying the mileage prior to repair or replacement of the  
63 odometer and the date on which it was repaired or replaced. No  
64 person shall remove or alter such a notice so affixed.

325E#21S

65 325E.21 DEALERS IN WIRE AND CABLE; RECORDS AND REPORTS.

66 Subdivision 1. Every person, firm or corporation,  
67 including an agent, employee or representative thereof, engaging  
68 in the business of buying and selling wire and cable commonly  
69 and customarily used by communication and electric utilities  
70 shall keep a record, in the English language, legibly written in  
71 ink or typewriting, at the time of each purchase or acquisition,  
72 an accurate account or description, including the weight if  
73 customarily purchased by weight, of such wire and cable commonly

1 and customarily used by communication and electric utilities  
 2 purchased or acquired, the date, time and place of the receipt  
 3 of the same, the name and address of the person selling or  
 4 delivering the same and the number of the driver's license of  
 5 such person. Such record, as well as such wire and cable  
 6 commonly and customarily used by communication and electric  
 7 utilities purchased or received, shall at all reasonable times  
 8 be open to the inspection of any sheriff or deputy sheriff of  
 9 the county, or of any ~~peiticeman~~ police officer or constable in \*  
 10 any incorporated city or statutory city, in which such business  
 11 may be carried on. Such person shall not be required to furnish  
 12 or keep such record of any property purchased from merchants,  
 13 manufacturers or wholesale dealers, having an established place  
 14 of business, or of any goods purchased at open sale from any  
 15 bankrupt stock, but a bill of sale or other evidence of open or  
 16 legitimate purchase of such property shall be obtained and kept  
 17 by such person which must be shown upon demand to the sheriff or  
 18 deputy sheriff of the county, or to any ~~peiticeman~~ police officer \*  
 19 or constable in any incorporated city or statutory city, in  
 20 which such business may be carried on. The provisions of this  
 21 subdivision and of subdivision 2 shall not apply to or include  
 22 any person, firm or corporation engaged exclusively in the  
 23 business of buying or selling motor vehicles, new or used, paper  
 24 or wood products, rags or furniture, secondhand machinery.  
 25 No change for subd 2 to 3

325F#11S

26 325F.11 TESTING OF ARTICLES TO DETERMINE AND INSURE  
 27 COMPLIANCE.

28 The commissioner or an authorized and qualified employee or  
 29 inspector, may undertake or provide for testing of toys and  
 30 other articles as ~~he~~ the commissioner, employee, or inspector \*  
 31 deems necessary to determine their safety and fitness for  
 32 commerce in this state in compliance with sections 325F.08 to  
 33 325F.18. The commissioner may contract or otherwise arrange  
 34 with any testing facility, public or private, for testing and  
 35 reporting the results. The commissioner may, by rule, require  
 36 that any toy or other article within the provisions of sections  
 37 325F.08 to 325F.18 be adequately tested by a reputable testing  
 38 facility, or the manufacturer or distributor of the article, and  
 39 that the certified results of the test be filed with the  
 40 commissioner before the sale, distribution, or other movement in  
 41 commerce within this state of the toys or articles. The  
 42 commissioner may by rule provide for penalties for the failure  
 43 to provide test results.

325F#12S

44 325F.12 REPURCHASE OF BANNED ARTICLES.

45 In the case of any article sold by its manufacturer,  
 46 distributor, or dealer which has been banned, whether or not it  
 47 was banned at the time of its sale, the article shall, in  
 48 accordance with regulations of the director, be repurchased as  
 49 follows:

50 (a) The manufacturer of the article shall repurchase it  
 51 from the person to whom ~~he~~ the manufacturer sold it, and shall \*  
 52 refund that person the purchase price paid for the article. If  
 53 the manufacturer requires the return of the article in  
 54 connection with the repurchase of it, the manufacturer shall  
 55 also reimburse the person for any reasonable and necessary  
 56 expenses incurred in returning it to the manufacturer.

57 (b) The distributor of any banned article shall repurchase  
 58 it from the person to whom ~~he~~ the distributor sold it, and shall \*  
 59 refund that person the purchase price paid for the article. If  
 60 the distributor requires the return of the article in connection  
 61 with ~~his~~ the repurchase of it in accordance with this clause, \*  
 62 the distributor shall reimburse that person for any reasonable  
 63 and necessary expenses incurred in returning it to the  
 64 distributor.

65 (c) In the case of any banned article sold at retail by a  
 66 dealer, if the person who purchased it from the dealer returns  
 67 it to ~~him~~ the dealer, the dealer shall refund the purchase price \*  
 68 paid for it and reimburse ~~him~~ the purchaser for any reasonable \*  
 69 and necessary transportation charges incurred in its return.

325F#13S

70 325F.13 BANNED HAZARDOUS TOYS; PROHIBITIONS.

71 No person shall sell, expose for sale, deliver, give away,  
 72 ~~have-in-his-possession~~ possess, or introduce or deliver for \*  
 73 introduction into commerce any hazardous toy or article intended

1 to be used by a child or banned hazardous toy or article  
2 intended to be used by a child.

325F#24S

3 325F.24 ENFORCEMENT; PENALTIES.

4 Subdivision 1. Violation of section 325F.20, subdivision  
5 2, or section 325F.21, subdivision 2 or 3, shall constitute a  
6 misdemeanor, provided that the sole liability for such violation  
7 on insulation sold under the manufacturer's brand or trademark  
8 shall be the manufacturer's, and that an industry member who is  
9 not a manufacturer shall be liable under this subdivision only  
10 ~~if he has~~ by having actual knowledge or knowledge fairly implied \*  
11 on the basis of the objective circumstances that the insulation  
12 presents a clear and present danger or has not been subject to  
13 the required testing procedures.

14 No change for subd 2 to 4

325F#27S

15 325F.27 SALE OF BEDDING.

16 No person shall sell, offer for sale, consign for sale, or  
17 ~~have-in-his-possession~~ possess with intent to sell, or consign \*  
18 for sale any bedding used in a private or public hospital or any  
19 article of bedding that has been used by or about any person  
20 having an infectious or contagious disease.

325F#29S

21 325F.29 SALES FORBIDDEN; EXCEPTIONS; PENALTIES.

22 No person shall sell, lease, offer to sell or lease, or  
23 deliver or consign for sale or lease, or ~~have-in-his-possession~~ \*  
24 possess with intent to sell, lease, deliver, or consign for sale \*  
25 or lease, any bedding made, remade, or renovated in violation of  
26 sections 325F.25 to 325F.32 or any second-hand bedding unless  
27 since last used it has been thoroughly sterilized and  
28 disinfected as provided under section 325F.28. A violation of  
29 sections 325F.25 to 325F.32 is a misdemeanor. The penalty  
30 provisions of section 8.31 shall apply when any person is found  
31 to have violated sections 325F.25 to 325F.32.

325F#30S

32 325F.30 SHODDY MATERIAL TO BE LABELED.

33 No person, ~~by-himself as principal~~ or ~~his~~ by agents, \*  
34 servants, or employees, shall make or sell, or offer to sell, \*  
35 deliver, or consign for sale, or ~~have-in-his-possession~~ possess \*  
36 with intent to sell, deliver, or consign for sale any bedding  
37 made of material that has theretofore been used as a container  
38 for or in contact with any animal or vegetable matter or any  
39 material defined as shoddy, unless the bedding shall be labeled  
40 as such, or any material that has theretofore been used unless  
41 the same shall have been cleaned and sterilized.

325F#31S

42 325F.31 BEDDING TO BE LABELED.

43 No person shall make or remake, or sell, offer for sale,  
44 consign for sale, or ~~have-in-his-possession~~ possess with intent \*  
45 to sell, offer for sale, or consign for sale any article of  
46 bedding unless the same is labeled as follows:

47 On each article of bedding a label of durable material not  
48 less than three by four and one-half inches in size shall be  
49 displayed, upon which shall be in plain print, in the English  
50 language, a description of the material used as filling of such  
51 article of bedding; and, if such material, or any portion  
52 thereof, shall not have been previously used, the words  
53 "manufactured of new material" shall appear upon the label,  
54 together with the name and address of the maker or vendor  
55 thereof. If any of the material used in the making or remaking  
56 of such article of bedding shall have been previously used, the  
57 words "manufactured of second-hand material" or "remade of  
58 second-hand material", as the case may be, shall appear upon the  
59 label, together with the name and address of the maker or vendor  
60 thereof, and also a description of the material used in the  
61 filling of such article of bedding. On any article of bedding,  
62 not remade, but which has been previously used, the words  
63 "second-hand materials used in filling not known" shall appear  
64 upon the label, together with the name and address of the vendor  
65 thereof.

66 The statement required under this section shall be in form  
67 as follows:

- 68 "OFFICIAL STATEMENT
- 69 Materials used in filling .....
- 70 Made by.....
- 71 Vendor .....

1 Address .....

2 This article is made in compliance with Minnesota Statutes,  
3 Sections 325F.25 to 325F.33."

4 The statement of compliance required in the foregoing  
5 official statement shall not be construed to imply that it is  
6 prohibited to state also that the article of bedding is made in  
7 compliance with any act or acts of other states.

8 The words "manufactured of new material", or "manufactured  
9 of second-hand material", or any article of bedding not remade,  
10 "second-hand materials used in filling not known", together with  
11 the description of the material used as filling of an article of  
12 bedding, shall be in letters not less than one-eighth of an inch  
13 in height. No term or description likely to mislead shall be  
14 used on any label to describe material used in the filling of  
15 any article of bedding. The label shall be attached to each  
16 mattress, pad, or upholstered spring by sewing all four edges of  
17 the label.

325F#34S

18 325F.34 TESTIMONY; PRODUCTION OF BOOKS AND DOCUMENTS.

19 No person shall be excused from attending and testifying or  
20 from producing books, papers, contracts, agreements, and  
21 documents in any case or proceedings instituted or brought under  
22 the provisions of sections 325F.25 to 325F.32, or in obedience  
23 to a subpoena, in any such case or proceedings, on the ground or  
24 for the reason that the testimony or evidence, documentary or  
25 otherwise, required of ~~him~~ the person may tend to criminate ~~him~~  
26 or subject ~~him~~ the person to a penalty or forfeiture; but no  
27 person shall be prosecuted or subjected to any penalty or  
28 forfeiture for or on account of any transaction, matter, or  
29 thing concerning which ~~he~~ the person may testify, or produce  
30 evidence, documentary or otherwise, in any such case or  
31 proceedings, or in obedience to a subpoena, in any such case or  
32 proceedings.

\*  
\*  
\*

325F#41S

33 325F.41 TESTIMONY; PRODUCTION OF BOOKS AND DOCUMENTS.

34 No person shall be excused from attending and testifying or  
35 from producing books, papers, contracts, agreements, and  
36 documents in any case or proceedings instituted or brought under  
37 the provisions of section 325F.40, or in obedience to a  
38 subpoena, in any such case or proceedings, on the ground or for  
39 the reason that the testimony or evidence, documentary or  
40 otherwise, required of ~~him~~ the person may tend to criminate ~~him~~  
41 or subject ~~him~~ the person to a penalty or forfeiture; but no  
42 person shall be prosecuted or subjected to any penalty or  
43 forfeiture for or on account of any transaction, matter, or  
44 thing concerning which ~~he~~ the person may testify, or produce  
45 evidence, documentary or otherwise, in any such case or  
46 proceedings, or in obedience to a subpoena, in any such case or  
47 proceedings.

\*  
\*  
\*

325F#58S

48 325F.58 ESTIMATES.

49 No change for subd 1 to 3

50 Subd. 4. At the option of the customer and upon ~~his~~ the  
51 customer's authorization a shop which provides a written  
52 estimate shall:

\*  
\*

- 53 (a) If the customer elects and the shop undertakes the  
54 repairs, perform the repairs described in the estimate; or
- 55 (b) Return the unrepaired motor vehicle, appliance, or  
56 dwelling place as close as possible to its former condition and  
57 release the motor vehicle or appliance to the customer upon  
58 payment of any charges for making the estimate or a service call.

59 No change for subd 5 to 8

325F#665S

60 325F.665 NEW MOTOR VEHICLE WARRANTIES; MANUFACTURER'S  
61 DUTY TO REPAIR, REFUND, OR REPLACE.

62 No change for subd 1 to 2

63 Subd. 3. MANUFACTURER'S DUTY TO REFUND OR REPLACE.

64 (a) If the manufacturer, its agents, or its authorized dealers  
65 are unable to conform the new motor vehicle to any applicable  
66 express warranty by repairing or correcting any defect or  
67 condition which substantially impairs the use or market value of  
68 the motor vehicle to the consumer after a reasonable number of  
69 attempts, the manufacturer shall, at the consumer's option,  
70 either replace the new motor vehicle with a comparable motor  
71 vehicle or accept return of the vehicle from the consumer and  
72 refund to the consumer the full purchase price, including the

1 cost of any options or other modifications arranged, installed,  
2 or made by the manufacturer, its agent, or its authorized dealer  
3 within 30 days after the date of original delivery, and all  
4 other charges including, but not limited to, sales tax, license  
5 fees and registration fees, less a reasonable allowance for the  
6 consumer's use of the vehicle not exceeding ten cents per mile  
7 driven or ten percent of the purchase price of the vehicle,  
8 whichever is less. Refunds must be made to the consumer, and  
9 lienholder, if any, as their interests appear on the records of  
10 the registrar of motor vehicles. A reasonable allowance for use  
11 is that amount directly attributable to use by the consumer and  
12 any previous consumer prior to ~~his-or-her~~ the first report of \*  
13 the nonconformity to the manufacturer, agent, or dealer and  
14 during any subsequent period when the vehicle is not out of  
15 service by reason of repair. It is an affirmative defense to  
16 any claim under this section (1) that an alleged nonconformity  
17 does not substantially impair the use or market value, or (2)  
18 that a nonconformity is the result of abuse, neglect, or  
19 unauthorized modifications or alterations of a motor vehicle by  
20 anyone other than the manufacturer, its agent or its authorized  
21 dealer.

22 (b) It is presumed that a reasonable number of attempts  
23 have been undertaken to conform a new motor vehicle to the  
24 applicable express warranties, if (1) the same nonconformity has  
25 been subject to repair four or more times by the manufacturer,  
26 its agents, or its authorized dealers within the express  
27 warranty term or during the period of one year following the  
28 date of original delivery of the motor vehicle to a consumer,  
29 whichever is the earlier date, but the nonconformity continues  
30 to exist, or (2) the vehicle is out of service by reason of  
31 repair for a cumulative total of 30 or more business days during  
32 the term or during the period, whichever is the earlier date.

33 (c) If the nonconformity results in a complete failure of  
34 the braking or steering system of the new motor vehicle and is  
35 likely to cause death or serious bodily injury if the vehicle is  
36 driven, it is presumed that a reasonable number of attempts have  
37 been undertaken to conform the vehicle to the applicable express  
38 warranties if the conformity has been subject to repair at least  
39 once by the manufacturer, its agents, or its authorized dealers  
40 within the express warranty term or during the period of one  
41 year following the date of original delivery of the motor  
42 vehicle to a consumer, whichever is the earlier date, and the  
43 nonconformity continues to exist.

44 (d) The term of an express warranty, the one-year period  
45 and the 30-day period shall be extended by any period of time  
46 during which repair services are not available to the consumer  
47 because of a war, invasion, strike, or fire, flood, or other  
48 natural disaster.

49 (e) The presumption contained in paragraph (b) applies  
50 against a manufacturer only if the manufacturer, its agent, or  
51 its authorized dealer has received prior written notification  
52 from or on behalf of the consumer at least once and an  
53 opportunity to cure the defect alleged. If the notification is  
54 received by the manufacturer's agent or authorized dealer, the  
55 agent or dealer must forward it to the manufacturer by certified  
56 mail, return receipt requested.

57 (f) At the time of purchase the manufacturer must provide  
58 directly to the consumer a written statement on a separate piece  
59 of paper, in 10-point all capital type, in substantially the  
60 following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU  
61 MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OF IT OR A REFUND  
62 OF ITS PURCHASE PRICE. HOWEVER, TO BE ENTITLED TO REFUND OR  
63 REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT,  
64 OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM  
65 AN OPPORTUNITY TO REPAIR THE VEHICLE."

66 No change for subd 4 to 8

325F#67S

67 325F.67 FALSE STATEMENT IN ADVERTISEMENT.

68 Any person, firm, corporation, or association who, with  
69 intent to sell or in anywise dispose of merchandise, securities,  
70 service, or anything offered by such person, firm, corporation,  
71 or association, directly or indirectly, to the public, for sale  
72 or distribution, or with intent to increase the consumption  
73 thereof, or to induce the public in any manner to enter into any  
74 obligation relating thereto, or to acquire title thereto, or any  
75 interest therein, makes, publishes, disseminates, circulates, or

1 places before the public, or causes, directly or indirectly, to  
 2 be made, published, disseminated, circulated, or placed before  
 3 the public, in this state, in a newspaper or other publication,  
 4 or in the form of a book, notice, handbill, poster, bill, label,  
 5 price tag, circular, pamphlet, program, or letter, or over any  
 6 radio or television station, or in any other way, an  
 7 advertisement of any sort regarding merchandise, securities,  
 8 service, or anything so offered to the public, for use,  
 9 consumption, purchase, or sale, which advertisement contains any  
 10 material assertion, representation, or statement of fact which  
 11 is untrue, deceptive, or misleading, shall, whether or not  
 12 pecuniary or other specific damage to any person occurs as a  
 13 direct result thereof, be guilty of a misdemeanor, and any such  
 14 act is declared to be a public nuisance and may be enjoined as  
 15 such.

16 The duty of a strict observance and enforcement of this law  
 17 and prosecution for any violation thereof is hereby expressly  
 18 imposed upon the attorney general, and it shall be the duty of  
 19 the county attorney of any county wherein a violation of this  
 20 section shall have occurred, upon complaint being made to him,  
 21 to prosecute any person violating any of the provisions of this  
 22 section.

325F#68S

23 325F.68 DEFINITIONS.

24 No change for subd 1 to 2

25 Subd. 3. "Person" means any natural person or ~~his~~ a legal  
 26 representative, partnership, corporation (domestic and foreign),  
 27 company, trust, business entity, or association, and any agent,  
 28 employee, ~~salesman~~ salesperson, partner, officer, director,  
 29 member, stockholder, associate, trustee, or cestui que trust  
 30 thereof.

31 No change for subd 4 to 5

325F#69S

32 325F.69 UNLAWFUL PRACTICES.

33 No change for subd 1

34 Subd. 2. REFERRAL AND CHAIN REFERRAL SELLING

35 PROHIBITED. (1) With respect to any sale or lease the seller  
 36 or lessor may not give or offer a rebate or discount or  
 37 otherwise pay or offer to pay value to the buyer or lessee as an  
 38 inducement for a sale or lease in consideration of ~~his~~ the  
 39 buyer's or lessee's giving to the seller or lessor the names of  
 40 prospective purchasers or lessees, or otherwise aiding the  
 41 seller or lessor in making a sale or lease to another person, if  
 42 the earning of the rebate, discount or other value is contingent  
 43 upon the occurrence of an event subsequent to the time the buyer  
 44 or lessee agrees to buy or lease.

45 (2) (a) With respect to any sale or lease, it shall be  
 46 illegal for any seller or lessor to operate or attempt to  
 47 operate any plans or operations for the disposal or distribution  
 48 of property or franchise or both whereby a participant gives or  
 49 agrees to give a valuable consideration for the chance to  
 50 receive something of value for inducing one or more additional  
 51 persons to give a valuable consideration in order to participate  
 52 in the plan or operation, or for the chance to receive something  
 53 of value when a person induced by the participant induces a new  
 54 participant to give such valuable consideration including such  
 55 plans known as chain referrals, pyramid sales, or multi-level  
 56 sales distributorships.

57 (b) The phrase "something of value" as used in paragraph  
 58 (a) above, does not mean or include payment based upon sales  
 59 made to persons who are not purchasing in order to participate  
 60 in the prohibited plan or operation.

61 (3) If a buyer or lessee is induced by a violation of this  
 62 subdivision to enter into a sale or lease, the agreement is  
 63 unenforceable and the buyer or lessee ~~at his option, may~~ has the  
 64 option to rescind the agreement with the seller or lessor and,  
 65 upon tendering the property received, or what remains of it,  
 66 obtain full or in the case of remains, a proportional  
 67 restitution of all sums paid, or retain the goods delivered and  
 68 the benefit of any services performed without any further  
 69 obligation to pay for them.

70 (4) With respect to a sale or lease in violation of this  
 71 section an assignee of the rights of the seller or lessor is  
 72 subject to all claims and defenses of the buyer or lessee  
 73 against the seller or lessor arising out of the sale or lease  
 74 notwithstanding an agreement to the contrary, but the assignee's

1 liability under this section may not exceed the amount owing to  
2 the assignee at the time the claim or defense is asserted  
3 against the assignee. Rights of the buyer or lessee under this  
4 section can only be asserted as a matter of defense to or  
5 set-off against a claim by the assignee.

6 (5) In a sale or lease in violation of this section, the  
7 seller or lessor may not take a negotiable instrument other than  
8 a check as evidence of the obligation of the buyer or lessee. A  
9 holder is not in good faith if ~~he~~ the holder takes a negotiable \*  
10 instrument with notice that it is issued in violation of this  
11 section.

12 (6) Any person who violates any provision of this  
13 subdivision shall be guilty of a gross misdemeanor.

14 No change for subd 3 to 5

325F#733S

15 325F.733 LICENSE; APPLICATION; TERMS AND CONDITIONS.

16 Subdivision 1. APPLICATION. Any precious metal  
17 dealer desiring to engage in or transact business as such in any  
18 county of this state shall file an application for a license for  
19 that purpose with the auditor of the county in which ~~he~~ the \*  
20 dealer desires to do business. The ~~applicant shall state his~~ \*  
21 application shall include the applicant's name, date of birth, \*  
22 resident address, and locations of the proposed principal place  
23 of business and branch offices within the county, and other  
24 locations within the county where the applicant intends to hold  
25 secondhand precious metals. If the person in charge of the  
26 business or a branch office is someone other than the applicant,  
27 his the name, date of birth, and resident address of the person \*  
28 in charge shall be stated with the location or branches \*  
29 indicated. If the applicant is a corporation or partnership the  
30 name, date of birth and resident address of each officer and  
31 general partner shall be stated. Each application shall be kept  
32 by the auditor for a period of no less than three years and  
33 shall be available for inspection only by employees of the  
34 county auditor, the county attorney, the attorney general, or by  
35 a peace officer.

36 No change for subd 2 to 5

37 Subd. 6. POSTING OF LICENSE. Every precious metal  
38 dealer shall prominently post ~~his~~ the dealer's license in a \*  
39 conspicuous location at ~~his~~ the dealer's principal place of \*  
40 business and a copy of ~~his~~ the license in a conspicuous location \*  
41 at each branch office.

42 No change for subd 7 to 8

325F#734S

43 325F.734 IDENTIFICATION OF SELLERS.

44 Every precious metal dealer shall require a seller of  
45 secondhand items containing precious metals to present to ~~him~~ \*  
46 the dealer at the time of the transaction an identification card \*  
47 of the seller containing a picture of the seller and ~~his~~ the \*  
48 seller's address. \*

325F#735S

49 325F.735 RECORDS REQUIRED.

50 Every precious metal dealer shall keep a book at ~~his~~ the \*  
51 dealer's business location in which shall be clearly written in \*  
52 ink, in the English language, at the time of each transaction,  
53 or as close thereto as possible, the following information:

- 54 (1) An accurate description of every secondhand item \*  
55 containing precious metals bought, including the type of item, \*  
56 number of items, brand name of item, if any, engraving or other \*  
57 identifying features of the item, if any, and a description of  
58 any gems attached;
- 59 (2) The amount of money paid;
- 60 (3) The date of the transaction; and
- 61 (4) From the identification card containing a picture of  
62 the seller, the type of card presented and the serial number of  
63 the card, if any, and the name and address of the person selling  
64 the item. The book, as well as the item in the possession of  
65 the dealer, shall at all reasonable times be open to inspection  
66 by any police officer of the city wherein the business is  
67 located or the sheriff or any deputy sheriff of the county  
68 wherein the business is located.

325F#736S

69 325F.736 REQUIRED HOLDING PERIOD.

70 Every precious metal dealer shall keep in ~~his~~ possession at \*  
71 ~~his~~ the dealer's business location or other location within the \*  
72 licensing county from the time of the transaction or as close



1 thereto as possible, for a period of no less than 14 days, every  
 2 secondhand item containing precious metal purchased by the  
 3 dealer unless the item is purchased or consigned from another  
 4 dealer licensed under section 325F.733. The item shall not be  
 5 altered at the time of sale and shall remain unaltered during  
 6 the required holding period.

325F#737S

7 325F.737 ADDITIONAL HOLDING PERIOD.

8 The sheriff or ~~his~~ a designee may by written notification \*  
 9 require a precious metal dealer licensed in ~~his~~ the sheriff's \*  
 10 county not to sell or alter a secondhand item containing \*  
 11 precious metal if ~~he~~ the sheriff or designee has probable cause \*  
 12 that the item is stolen. The item shall not be sold, altered,  
 13 or removed from the licensed premises until authorized to be  
 14 released in writing by the sheriff or ~~his~~ a designee. \*

15 The chief of police or ~~his~~ a designee may also exercise \*  
 16 this same authority for licensed businesses, within ~~his~~ the \*  
 17 chief's jurisdiction. \*

325F#739S

18 325F.739 CERTAIN PURCHASES PROHIBITED.

19 It is unlawful for a precious metal dealer to purchase a  
 20 secondhand item containing precious metals from a person under  
 21 18 years of age unless the person is accompanied by ~~his~~ the \*  
 22 person's parent or guardian who is identified and whose identity \*  
 23 is recorded in accordance with sections 325F.734 and 325F.735.

325F#75S

24 325F.75 ADVERTISING RESTRICTIONS.

25 Except as provided in this section, where a plumbing  
 26 license is required under section 326.40, no person offering  
 27 plumbing services may do any of the following unless the person  
 28 employs a licensed master plumber:

29 (1) advertise as a plumbing contractor, master plumber, or  
 30 plumber;

31 (2) append ~~his-or-her~~ the person's name to, or in \*  
 32 connection with, the title "plumbing contractor," "master  
 33 plumber," or "plumber";

34 (3) append ~~his-or-her~~ the person's name to any other words \*  
 35 that tend to represent the person as a plumbing contractor,  
 36 master plumber, or plumber.

37 A person who advertises as a master plumber shall include \*  
 38 in the advertisement the number of ~~his-or-her~~ the person's \*  
 39 license as a master plumber. A person who advertises as a  
 40 plumbing contractor shall include in the advertisement the  
 41 license number of the master plumber employed by the plumbing  
 42 contractor.

43 A vehicle used to conduct plumbing business must  
 44 prominently display on its exterior the license number of the  
 45 master plumber performing plumbing services.

46 This section does not apply to a person advertising  
 47 plumbing services if that person does not engage in or work at  
 48 the business of a master plumber in a city of 5,000 or more  
 49 population, or in a city of less than 5,000 in population that  
 50 by ordinance require licensing to do business as a master  
 51 plumber.

325G#01S

52 325G.01 EFFECT OF DELIVERY.

53 Unless otherwise agreed, where unsolicited goods are  
 54 addressed to and sent to a person, ~~he~~ the person has a right to \*  
 55 refuse to accept delivery of the goods and is not bound to  
 56 return such goods to the sender. The receipt of such  
 57 unsolicited goods shall for all purposes be deemed an  
 58 unconditional gift to the recipient who may use or dispose of  
 59 the same in any manner ~~he~~ the recipient sees fit without any \*  
 60 obligation ~~on-his-part~~ to the sender. \*

325G#03S

61 325G.03 UNSOLICITED FINANCIAL TRANSACTION CARDS.

62 No person in whose name a financial transaction card is  
 63 issued shall be liable for any amount resulting from use of that  
 64 card from which ~~he~~ that person or a member of ~~his~~ the person's \*  
 65 family or household derives no benefit unless ~~he~~ the person has \*  
 66 accepted the card by (1) signing or using the card, or (2)  
 67 authorizing the use of the card by another. A mere failure to  
 68 destroy or return an unsolicited financial transaction card is  
 69 not such an acceptance. Signing or using a card is not  
 70 acceptance if those acts were performed under duress as defined  
 71 under section 609.08.

325G#04S

1 325G.04 LOST OR STOLEN FINANCIAL TRANSACTION CARDS.  
 2 Subdivision 1. No person in whose name a financial  
 3 transaction card has been issued which ~~he~~ the person has \*  
 4 accepted as provided in section 325G.03 shall be liable for any  
 5 amount in excess of \$50 resulting from the unauthorized use of  
 6 the card from which ~~he~~ the person or a member of ~~his~~ the \*  
 7 person's family or household derives no benefit; provided, \*  
 8 however, that the limitation on liability of this subdivision  
 9 shall be effective only if the issuer is notified of any  
 10 unauthorized charges contained in a bill within 60 days of  
 11 receipt of the bill by the person in whose name the card is  
 12 issued.

13 Subd. 2. No person in whose name a financial transaction  
 14 card is issued shall be liable for any amount resulting from the  
 15 unauthorized use of the financial transaction card after receipt  
 16 by the issuer of notice that the card has been lost or stolen  
 17 and from which such person or a member of ~~his~~ the person's \*  
 18 family or household derives no benefit.

325G#06S

19 325G.06 DEFINITIONS.

20 No change for subd 1

21 Subd. 2. "Home solicitation sale" means a sale of goods or  
 22 services, by a seller who regularly engages in transactions of  
 23 the same kind, purchased primarily for personal, family or  
 24 household purposes, and not for agricultural purposes, with a  
 25 purchase price of more than \$25, in which the seller or a person  
 26 acting for ~~him~~ the seller personally solicits the sale, and when \*  
 27 the buyer's agreement or offer to purchase is made at a place  
 28 other than the place of business of the seller, except as  
 29 otherwise provided in this subdivision. It does not include:

30 (a) a sale made pursuant to prior negotiations in the  
 31 course of a visit by the buyer to a retail business  
 32 establishment having a fixed permanent location where the goods  
 33 are exhibited or the services are offered for sale on a  
 34 continuing basis; or

35 (b) a sale in which the buyer has initiated the contact and  
 36 the goods or services are needed to meet a bona fide immediate  
 37 personal emergency of the buyer and the buyer furnishes the  
 38 seller with a separate dated and signed statement not furnished  
 39 by the seller describing the situation requiring immediate  
 40 remedy and expressly acknowledging and waiving the right to  
 41 cancel the sale. This exclusion shall only apply where (i) the  
 42 seller in good faith makes a substantial beginning of  
 43 performance of the contract before the buyer gives notice of  
 44 cancellation, and, (ii) in the case of goods, the goods cannot  
 45 be returned to the seller in substantially as good condition as  
 46 when received by the buyer; or

47 (c) a sale in which the buyer has initiated the contact and  
 48 specifically requested the seller to visit ~~his~~ the buyer's home \*  
 49 for the purpose of repairing or performing maintenance upon the  
 50 buyer's property. If in the course of such a visit, the seller  
 51 sells the buyer the right to receive additional services or  
 52 goods other than replacement parts necessarily used in  
 53 performing the maintenance or in making the repairs, the sale of  
 54 those additional goods or services would not fall within this  
 55 exclusion; or

56 (d) a sale in which the buyer has initiated the contact  
 57 either by oral, telephone, or written request (other than on a  
 58 form provided by the seller), and requested the seller to visit  
 59 ~~his~~ the buyer's home for the purpose of negotiating the purchase \*  
 60 of the specific good or service requested. This exclusion shall  
 61 only apply where the buyer furnishes the seller with a separate  
 62 dated and signed statement in the buyer's handwriting expressly  
 63 acknowledging and waiving ~~his~~ the right to cancel the sale; or \*  
 64 (e) a sale of insurance, securities, or real property; or

65 a sale by public auction; or

66 (f) a sale of a motor vehicle, as defined in section  
 67 168.011, subdivision 4, when the buyer's agreement or offer to  
 68 purchase is made at a place other than the buyer's place of  
 69 residence.

70 No change for subd 3 to 6

325G#08S

71 325G.08 WRITING REQUIRED; NOTICE OF RIGHT TO CANCEL;  
 72 NOTICE OF CANCELLATION.

73 Subdivision 1. In a home solicitation sale, at the time

1 the sale occurs, the seller shall:  
 2 (a) inform the buyer orally of ~~his~~ the right to cancel; \*  
 3 (b) furnish the buyer with a fully completed receipt or  
 4 copy of a contract pertaining to the sale which shows the date  
 5 of the transaction, contains the name and address of the seller,  
 6 and in immediate proximity to the space reserved in the contract  
 7 for the signature of the buyer or on the front page of the  
 8 receipt if a contract is not used and in bold face type of a  
 9 minimum size of ten points, a statement in substantially the  
 10 following form:

11 "You, the buyer, may cancel this purchase at any time prior  
 12 to midnight of the third business day after the date of this  
 13 purchase. See attached notice of cancellation form for an  
 14 explanation of this right."; and

15 (c) furnish each buyer a fully completed form in duplicate,  
 16 captioned, "NOTICE OF CANCELLATION", which shall be attached to  
 17 the contract or receipt and easily detachable, and which shall  
 18 contain in bold face type of a minimum size of ten points the  
 19 following information and statements:  
 20

21  
 22 "NOTICE OF CANCELLATION

23 (enter type of goods or services purchased)

24 .....

25 (goods or services)

26 (enter date of transaction)

27 .....

28 (date)

29 If you do not want the goods or services described above,  
 30 you may cancel your purchase by mailing or delivering a signed  
 31 and dated copy of this cancellation notice or any other written  
 32 notice, or send a telegram to (Name of seller), at (Address of  
 33 Seller's Place of Business) not later than midnight of (Date).  
 34 If you cancel, any payments made by you under the contract or  
 35 sale, any property traded in, and any instrument executed by you  
 36 will be returned within ten business days following receipt by  
 37 the seller of your cancellation notice, and any security  
 38 interest arising out of the transaction will be cancelled.

39 If you cancel, you must make available to the seller at  
 40 your residence, in substantially as good condition as when  
 41 received, any goods delivered to you under this contract or  
 42 sale; or you may, if you wish, comply with the written  
 43 instructions of the seller regarding the return shipment of the  
 44 goods at the seller's expense and risk.

45 If the seller does not pick up the goods within 20 days of  
 46 the date of your notice of cancellation, you may retain or  
 47 dispose of them without any further obligation.  
 48

49 I HEREBY CANCEL THIS TRANSACTION.

50  
 51 .....

52 (Date)

53  
 54  
 55 ....."

56 (Buyer's signature)

57 Subd. 2. In lieu of the notice of cancellation required by  
 58 subdivision 1, the seller may provide a notice which conforms to  
 59 applicable federal law or regulation so long as it provides the  
 60 information required by subdivision 1. Until the seller has  
 61 complied with this section the buyer may cancel the home  
 62 solicitation sale by notifying the seller in any manner and by  
 63 any means of ~~his~~ the intention to cancel. \*

325G#09S

64 325G.09 RETURN OF PAYMENTS OR GOODS.

65 Subdivision 1. Within ten days after a home solicitation  
 66 sale has been cancelled or an offer to purchase revoked, the  
 67 seller must tender to the buyer any payments made by the buyer  
 68 and any note or other evidence of indebtedness. If the down  
 69 payment includes goods, traded in, the goods must also be  
 70 tendered by the seller in as good condition as when received by  
 71 the seller. If the seller fails to tender said goods, the buyer  
 72 may, ~~if he so elects,~~ elect to recover from the seller an amount \*  
 73 equal to the trade-in allowance stated in the agreement.

74 Subd. 2. Until the seller has complied with the  
 75 obligations imposed by this section, the buyer may retain

1 possession of the goods delivered to ~~him~~ the buyer by the seller. \*

2 Subd. 3. Except as provided in subdivision 2, within a

3 reasonable time after a home solicitation sale has been

4 cancelled or an offer to purchase has been revoked, the buyer

5 upon demand must tender to the seller any goods delivered by the

6 seller pursuant to the sale. The buyer is not obligated to

7 tender at any place other than ~~his~~ the buyer's residence. \*

8 No change for subd 4

9 Subd. 5. The buyer has the duty to take reasonable care of

10 the goods in ~~his~~ the buyer's possession before cancellation or \*

11 revocation and during the time provided in subdivision 4 for the

12 seller to demand possession, during which time the goods are

13 otherwise at the seller's risk.

14 No change for subd 6

325G#12S

15 325G.12 DEFINITIONS.

16 No change for subd 1

17 Subd. 2. "Personal solicitation" means any attempt by a

18 seller who regularly engages in transactions of the same kind,

19 to sell goods or services which are primarily for personal,

20 family, or household purposes, and not for agricultural

21 purposes, when either the seller or a person acting for ~~him~~ the \*

22 seller, contacts the buyer by telephone or in person other than \*

23 at the place of business of the seller, except:

24 (a) An attempted sale in which the buyer personally knows

25 the identity of the seller, the name of the business firm or

26 organization ~~he~~ the seller represents, and the identity or kinds \*

27 of goods or services offered for sale; or

28 (b) An attempted sale in which the buyer has initiated the

29 contact with the seller; or

30 (c) An attempted sale of a newspaper subscription in which

31 the seller is a minor child engaged in both the delivery and

32 sale of the newspaper.

33 No change for subd 3 to 5

325G#13S

34 325G.13 DISCLOSURE OBLIGATION.

35 Before any personal solicitation every seller shall, at the

36 time of initial contact or communication with the potential

37 buyer, clearly and expressly disclose: the individual seller's

38 name, the name of the business firm or organization ~~he~~ the \*

39 seller represents, the identity or kinds of goods or services ~~he~~ \*

40 the seller wishes to demonstrate or sell, and that ~~he~~ the seller \*

41 wishes to demonstrate or sell the identified goods or services.

42 When the initial contact is made in person, the seller shall

43 also show the potential buyer an identification card which

44 clearly states the seller's name and the name of the business or

45 organization ~~he-represents~~ represented. The disclosures \*

46 required by this section shall be made before asking any

47 questions or making any statements except an initial greeting.

48 Nonprofit organizations are exempt from the requirements of this

49 section.

325G#15S

50 325G.15 DEFINITIONS.

51 No change for subd 1 to 4

52 Subd. 5. "Sale of goods" includes, without limitation, any

53 agreement in the form of a bailment or lease of goods if the

54 bailee or lessee agrees to pay as compensation for use a sum

55 substantially equivalent to or in excess of the aggregate value

56 of the goods involved and it is agreed that the bailee or lessee

57 will become, or for no other or a nominal consideration has the

58 option to become, the owner of the goods upon full compliance

59 with ~~his~~ the bailee's or lessee's obligations under the \*

60 agreement. The term also includes a contract in the form of a

61 terminable bailment or lease of goods if: (a) the bailee or

62 lessee has the option to renew the contract by making the

63 payments specified in the contract; (b) the contract obligates

64 the bailor or lessor to transfer ownership of the property to

65 the bailee or lessee for no other or a nominal consideration

66 upon full compliance by the bailee or lessee with ~~his~~ the \*

67 bailee's or lessee's obligations under the contract including \*

68 any obligation incurred by reason of the exercise of an option

69 by the bailee or lessee to renew the contract; and (c) the

70 payments contracted for by the bailee or lessee, including those

71 payments pursuant to the exercise of an option by the bailee or

72 lessee to renew the contract, are substantially equivalent to or

73 in excess of the aggregate value of the property and services

1 involved.

325G#16S

2 325G.16 RESTRICTIONS.

3 Subdivision 1. INSTRUMENTS. In a consumer credit  
4 sale, the seller or lessor may not take a negotiable instrument  
5 other than a check as evidence of the obligation of the buyer or  
6 lessee. A holder is not in good faith if he the holder takes a \*  
7 negotiable instrument with notice that it is issued in violation  
8 of this section.

9 Subd. 2. PROVISION RESTRICTIONS. No contract or  
10 obligation relating to a consumer credit sale shall contain any  
11 provision by which:

12 (a) The consumer agrees not to assert against an assignee  
13 any claim or defense arising out of the transaction;

14 (b) In the absence of consumer's default, the holder may  
15 arbitrarily and without reasonable cause, accelerate the  
16 maturity of any part or all of the amount owing thereunder;

17 (c) A power of attorney is given to confess judgment in  
18 this state, or an assignment of wages is given;

19 (d) The seller or holder of the contract or obligation, or  
20 a person acting on his the seller's or holder's behalf, is given \*  
21 authority to enter upon the consumer's premises unlawfully or to  
22 commit any breach of the peace in the repossession of the goods;

23 (e) The consumer waives any right of action against the  
24 seller or holder of the contract or obligation, or any other \*  
25 person acting on his the seller's or holder's behalf, for any  
26 illegal act committed in the collection of payments under the  
27 contract or obligation or in the repossession of goods;

28 (f) The consumer relieves the seller from any liability for  
29 any legal remedy which the consumer may have against the seller  
30 under the contract or obligation or any separate instrument  
31 executed in connection therewith.

32 No change for subd 3 to 5

325G#22S

33 325G.22 RESTRICTIONS ON DEFICIENCY JUDGMENTS.

34 Subdivision 1. If the seller or lender repossesses or  
35 voluntarily accepts surrender of personal property in which he \*  
36 the seller or lender has a security interest arising out of a \*  
37 consumer credit transaction and the aggregate amount of the  
38 credit extended in the transaction was \$3,000 or less, the buyer  
39 is not personally liable to the seller or lender for the unpaid  
40 balance of the debt arising from the consumer credit  
41 transaction, and the seller or lender is not obligated to resell  
42 the collateral.

43 No change for subd 2

44 Subd. 3. If the seller or lender elects to bring an action  
45 and obtains judgment against the buyer for a debt arising from a \*  
46 consumer credit transaction, when under this section he the \*  
47 seller or lender would not be entitled to a deficiency \*  
48 judgment if he repossessed on repossessing the collateral, and \*  
49 obtains-judgment (a) he the seller or lender may not repossess \*  
50 the collateral, and (b) the collateral is not subject to levy or  
51 sale on execution or similar proceedings pursuant to the  
52 judgment.

325G#26S

53 325G.26 LIMITATION ON MEMBERSHIP PERIOD.

54 No contract shall be valid for a term longer than 18 months  
55 from the date upon which the contract is signed. However, a  
56 club may allow a member to convert his a contract into a \*  
57 contract for a period longer than 18 months after the member has  
58 been a member of the club for a period of at least six months.  
59 The duration of the contract shall be clearly and conspicuously  
60 disclosed in the contract in bold face type of a minimum size of  
61 14 points.

325G#28S

62 325G.28 DUTIES OF ATTORNEY GENERAL; PENALTIES; REMEDIES.

63 Subdivision 1. The attorney general shall investigate  
64 violations of sections 325G.23 to 325G.28~~7-and~~. When from the \*  
65 attorney general possesses information ~~in his possession he has~~ \*  
66 providing reasonable ground to believe that any person has \*  
67 violated or is about to violate any provision of sections  
68 325G.23 to 325G.28, or that any club is insolvent~~7-he the~~ \*  
69 attorney general shall be entitled on behalf of the state (a) to \*  
70 sue for and have injunctive relief in any court of competent  
71 jurisdiction against any such violation or threatened violation  
72 without abridging the penalties provided by law; (b) to sue for

1 and recover for the state, from any person who is found to have  
 2 violated any provision of sections 325G.23 to 325G.28, a civil  
 3 penalty, in an amount to be determined by the court, not in  
 4 excess of \$25,000; and in case the club has failed to maintain  
 5 the bond required by sections 325G.23 to 325G.28, or is  
 6 insolvent or in imminent danger of insolvency, to sue for and  
 7 have an order appointing a receiver to wind up its affairs. All  
 8 civil penalties recovered under this subdivision shall be  
 9 deposited in the general fund of the state treasury.

10 No change for subd 2

325G#35S

11 325G.35 REVIEW BY THE ATTORNEY GENERAL.

12 Subdivision 1. PROCESS OF REVIEW. Any seller,  
 13 creditor or lessor may submit a consumer contract to the  
 14 attorney general for review as to whether the contract complies  
 15 with the requirements of section 325G.31. After reviewing the  
 16 contract the attorney general shall: (1) certify that the  
 17 contract complies with section 325G.31; (2) decline to certify  
 18 that the contract complies with section 325G.31 and note ~~his~~ \*  
 19 objections to the contractual language; (3) decline to review  
 20 the contract and refer the party submitting the contract to  
 21 other previously certified contracts of the same type; (4)  
 22 decline to review the contract because the contract's compliance  
 23 with section 325G.31 is the subject of pending litigation; or  
 24 (5) decline to review the contract because the contract is not  
 25 subject to section 325G.31.

26 No change for subd 2 to 5

326\*#01S

27 326.01 DEFINITIONS.

28 No change for subd 1 to 6d

29 Subd. 7. JOURNEYMAN PLUMBER. A "journeyman plumber"  
 30 is any person, other than a master plumber, who, as ~~his~~ a \*  
 31 principal occupation, is engaged as an employee of, or otherwise  
 32 working under the direction of, a master plumber in the  
 33 practical instalation of plumbing.

34 No change for subd 8

35 Subd. 9. PLUMBER'S APPRENTICE. A "plumber's  
 36 apprentice" is any person, other than a journeyman or master  
 37 plumber, who, as ~~his~~ a principal occupation, is engaged in \*  
 38 working as an employee of a master plumber under the immediate  
 39 and personal supervision of either a master or journeyman  
 40 plumber in learning and assisting in the instalation of plumbing.

41 No change for subd 10

42 Subd. 11. JOURNEYMAN STEAMFITTER. A "journeyman  
 43 steamfitter" is any person, other than a contracting  
 44 steamfitter, who, as ~~his~~ a principal occupation, is engaged in \*  
 45 the practical instalation of high pressure steam work.

46 No change for subd 12

47 Subd. 13. STEAMFITTER'S APPRENTICE. A  
 48 "steamfitter's apprentice" is any person, other than a  
 49 journeyman or master steamfitter, who, as ~~his~~ a principal \*  
 50 occupation, is engaged in learning and assisting in the  
 51 instalation of high pressure steamfitting.

52 No change for subd 14 to 21

326\*#02S

53 326.02 REGISTRATION OF ARCHITECTS, ENGINEERS, SURVEYORS  
 54 AND LANDSCAPE ARCHITECTS.

55 Subdivision 1. REGISTRATION MANDATORY. In order to  
 56 safeguard life, health, and property, and to promote the public  
 57 welfare, any person in either public or private capacity  
 58 practicing, or offering to practice, architecture, professional  
 59 engineering, land surveying or landscape architecture in this  
 60 state, either as an individual, a co-partner, or as agent of  
 61 another, shall be registered as hereinafter provided. It shall  
 62 be unlawful for any person to practice, or to offer to practice,  
 63 in this state, architecture, professional engineering, land  
 64 surveying or landscape architecture, or to solicit or to  
 65 contract to furnish work within the terms of sections 326.02 to  
 66 326.15, or to use in connection with ~~his~~ the person's name, or \*  
 67 to otherwise assume, use or advertise any title or description  
 68 tending to convey the impression that ~~he~~ the person is an \*  
 69 architect, professional engineer (hereinafter called engineer),  
 70 land surveyor or landscape architect, unless such person is  
 71 qualified by registration under sections 326.02 to 326.15.

72 Subd. 2. PRACTICE OF ARCHITECTURE. Any person shall  
 73 be deemed to be practicing architecture, within the meaning of

1 sections 326.02 to 326.15, who holds himself out as being able \*  
2 to perform or who does perform any professional service, such as  
3 planning, design, or supervision of construction for the purpose  
4 of assuring compliance with specifications and design, in  
5 connection with any private or public buildings, structures or  
6 projects, or the equipment or utilities thereof, or the  
7 accessories thereto, wherein the safeguarding of life, health,  
8 or property is concerned or involved, when such professional  
9 service requires the application of the art and science of  
10 construction based upon the principles of mathematics,  
11 aesthetics, and the physical sciences, acquired by education or  
12 training, and by experience. For the purposes of this  
13 subdivision "supervision" is a professional service as  
14 distinguished from superintending of construction and means the  
15 performance or the supervision thereof, of reasonable and  
16 ordinary on the site observations to determine that the  
17 construction is in substantial compliance with the approved  
18 drawings, plans and specifications.

19 Subd. 3. PRACTICE OF PROFESSIONAL ENGINEERING. Any  
20 person shall be deemed to be practicing professional engineering  
21 within the meaning of sections 326.02 to 326.15 who holds \*  
22 himself out as being able to perform or who does perform any  
23 technical professional service, such as planning, design or  
24 observation of construction for the purpose of assuring  
25 compliance with specifications and design, in connection with  
26 any public or private structures, buildings, utilities,  
27 machines, equipment, processes, works, or projects wherein the  
28 public welfare or the safeguarding of life, health, or property  
29 is concerned or involved, when such professional service  
30 requires the application of the principles of mathematics and  
31 the physical and applied engineering sciences, acquired by  
32 education or training, and by experience.

33 Subd. 4. PRACTICE OF LAND SURVEYING. Land surveying  
34 means the application of the principles of mathematics, physical  
35 and applied sciences and law to measuring and locating lines,  
36 angles, elevations and natural or man-made artificial features \*  
37 in the air, on the surface of the earth, underground and on the  
38 beds of bodies of water for the purpose of:

- 39 (a) monumenting property boundaries;  
40 (b) planning, designing, and platting of land and  
41 subdivisions including the topography, alignment and grades of  
42 streets; and  
43 (c) preparing and perpetuating maps, record plats and  
44 property descriptions.

45 Any person who offers to perform, holds himself out as \*  
46 being able to perform, or who does perform land surveying for \*  
47 others shall be practicing land surveying.

48 Nothing contained in the provisions of sections 326.02 to  
49 326.15, shall prohibit a licensed professional engineer,  
50 architect, or landscape architect from doing any work included  
51 in the practice of engineering, architecture and landscape  
52 architecture, if the work does not involve the establishment or  
53 reestablishment of property corners or property lines.

54 Subd. 4a. PRACTICE OF LANDSCAPE ARCHITECTURE. Any  
55 person shall be deemed to be practicing landscape architecture,  
56 within the meaning of sections 326.02 to 326.15, who holds \*  
57 himself out as being able to perform or who does perform any \*  
58 professional service in connection with the development of land  
59 areas where the dominant purpose of the service is the  
60 preservation, enhancement or determination of proper land uses,  
61 natural land features, ground cover and planting, naturalistic  
62 and aesthetic values, the settings, approaches or environment  
63 for structures or other improvements, and the consideration and  
64 determination of inherent problems of the land relating to  
65 erosion, wear and tear, blight and hazards. This practice shall  
66 include the location and arrangement of tangible objects and  
67 features incidental and necessary to the purposes outlined but  
68 shall not include the design of structures or facilities with  
69 separate and self-contained purposes as ordinarily included in  
70 the practice of engineering or architecture or the preparation  
71 of boundary surveys or final land plats, as ordinarily included  
72 in the practice of land surveying.

73 Nothing contained in sections 326.02 to 326.15 concerning  
74 landscape architects shall be construed:

- 75 (a) To apply to a professional engineer duly registered  
76 under the laws of this state;

1 (b) To apply to an architect registered under the laws of  
2 this state;

3 (c) To apply to a land surveyor registered under the laws  
4 of this state;

5 (d) To prevent a registered architect or professional  
6 engineer from doing landscape planning and designing;

7 (e) To exclude ~~nurserymen~~ nursery operators or other small  
8 ~~businessmen~~ business people from the preparation of landscape  
9 plans appropriate to the normal operation of their business;

10 (f) To authorize a landscape architect to engage in the  
11 practice of architecture, engineering, or land surveying;

12 No person shall use the designation landscape architect or  
13 any title or device indicating or representing that the person  
14 is a landscape architect or is practicing landscape architecture  
15 unless the person is registered under the provisions of sections  
16 326.02 to 326.15.

17 Subd. 5. LIMITATION. The provisions of sections  
18 326.02 to 326.15 shall not apply to the preparation of plans and  
19 specifications for the erection, enlargement, or alteration of  
20 any building or other structure by any person, for ~~his~~ that  
21 person's exclusive occupancy or use, unless such occupancy or  
22 use involves the public health or safety or the health or safety  
23 of the employees of said person, or of the buildings listed in  
24 section 326.03, subdivision 2, nor to any detailed or shop plans  
25 required to be furnished by a contractor to a registered  
26 engineer, landscape architect, or architect, nor to any  
27 standardized manufactured product, nor to any construction  
28 superintendent supervising the execution of work designed by an  
29 architect, landscape architect, or engineer registered in  
30 accordance with section 326.03, nor to the planning for and  
31 supervision of the construction and installation of work by an  
32 electrical contractor or master plumber as defined in and  
33 licensed pursuant to this chapter, where such work is within the  
34 scope of such licensed activity and not within the practice of  
35 professional engineering or architecture as defined in section  
36 326.02, subdivisions 2 and 3.

326\*#05S

37 326.05 QUALIFICATIONS OF BOARD MEMBERS.

38 Each member of the board shall be a resident of this state  
39 at the time of ~~his~~ appointment. Each member except the public  
40 members shall have been engaged in the practice of ~~his~~ the  
41 relevant profession for at least ten years and shall have been  
42 in responsible charge of work for at least five years. Each  
43 such member shall be a member in good standing of a recognized  
44 society of architects, engineers, land surveyors or landscape  
45 architects; and, except as provided in section 326.06, shall be  
46 a licensed architect, licensed engineer, licensed land surveyor  
47 or licensed landscape architect.

326\*#06S

48 326.06 GENERAL POWERS AND DUTIES OF BOARD.

49 Each member of the board shall receive a certificate of  
50 appointment from the governor, and, before beginning ~~his~~ a term  
51 of office, shall file with the secretary of state the  
52 constitutional oath of office. The board shall adopt and have  
53 an official seal, which shall be affixed to all licenses  
54 granted; shall make all rules, not inconsistent with law, needed  
55 in performing its duties; and shall fix standards for  
56 determining the qualifications of applicants for certificates,  
57 which shall not exceed the requirements contained in the  
58 curriculum of a recognized school of architecture, landscape  
59 architecture or engineering. The board shall make rules to  
60 define classes of buildings with respect to which persons  
61 performing services described in section 326.03, subdivision 2,  
62 may be exempted from the provisions of sections 326.02 to  
63 326.15, by a finding of no probable risk to life, health,  
64 property or public welfare. These rules shall be promulgated on  
65 or before July 1, 1979. Upon the adoption of these rules,  
66 section 326.03, subdivision 2, clauses (e) and (f), are  
67 superseded and of no effect.

326\*#07S

68 326.07 BOARD, MEETINGS OF, OFFICERS, QUORUM.

69 The board shall hold meetings at such times as the bylaws  
70 of the board may provide. Notice of all meetings shall be given  
71 in such manner as the bylaws may provide. The board shall elect  
72 annually from its members a chairman chair, a vice-chairman  
73 vice-chair, a secretary and a treasurer. A quorum of the board



1 shall consist of not less than nine members, of whom three shall  
 2 be architects or landscape architects or land surveyors, three  
 3 engineers, and three public members.

326\*#08S

4 326.08 EXPENSES OF BOARD AND MEMBERS.

5 Subdivision 1. The expenses of administering sections  
 6 326.02 to 326.15 shall be paid from the appropriation made to  
 7 the board. The expenses of the board shall be paid by voucher  
 8 made by the executive secretary and approved by the ~~chairman~~ \*  
 9 chair. Each member of the board shall receive \$35 for each day \*  
 10 or portion thereof that ~~he~~ the member attends a meeting of the \*  
 11 board or is otherwise engaged in performing official business of  
 12 the board. The members of the board shall be reimbursed for  
 13 ordinary and actual expenses in the same amount and manner as  
 14 state employees.

15 No change for subd 2

326\*#10S

16 326.10 LICENSURE.

17 Subdivision 1. ISSUANCE. The board shall on  
 18 application therefor on a prescribed form, and upon payment of a  
 19 fee prescribed by rule of the board, issue a license as an  
 20 architect, engineer, land surveyor or landscape architect. A  
 21 separate fee shall be paid for each profession licensed.

22 (1) To any person over 25 years of age, who is of good  
 23 moral character and repute, and who has the experience and  
 24 educational qualifications which the board by rule may prescribe.

25 (2) To any person who holds an unexpired certificate of  
 26 registration or license issued ~~to him~~ by proper authority in the \*  
 27 District of Columbia, any state or territory of the United  
 28 States, or any foreign country, in which the requirements for  
 29 registration or licensure of architects, engineers, land  
 30 surveyors or landscape architects, respectively, at the time of  
 31 registration or licensure in the other jurisdiction, were equal,  
 32 in the opinion of the board, to those fixed by the board and by  
 33 the laws of this state, and in which similar privileges are  
 34 extended to the holders of certificates of registration or  
 35 licensure issued by this state. The board may require such \*  
 36 person to submit a certificate of ~~his~~ technical qualification \*  
 37 from the National Council of Architectural Registration Boards  
 38 in the case of an architect, from the National Council of  
 39 Engineering Examiners in the case of an engineer, and from the  
 40 National Council of Landscape Architects Registration Board in  
 41 the case of a landscape architect.

42 Subd. 2. EXAMINATION. The board may subject any  
 43 applicant for licensure to such examinations as may be deemed  
 44 necessary to establish ~~his~~ qualifications. \*

45 In determining the qualifications in such cases of  
 46 applicants for licensure as architects, a majority vote of the  
 47 architect members of the board only shall be required; in  
 48 determining the qualifications in such cases of applicants for  
 49 licensure as engineers, a majority vote of the engineer members  
 50 of the board only, shall be required; and in determining the  
 51 qualifications of applicants for registration as land surveyors,  
 52 the affirmative vote of the land surveyor member and of one  
 53 engineer of the board only, shall be required; and in  
 54 determining the qualifications of applicants for licensure as  
 55 landscape architects, the affirmative vote of the landscape  
 56 architect member of the board and of one architect member or one  
 57 civil engineer member of the board only, shall be required.

58 No change for subd 2a

59 Subd. 5. DELAYED RENEWAL FEE. The failure on the  
 60 part of any licensee to renew ~~his~~ a license shall not deprive \*  
 61 such person of ~~his~~ the right of renewal thereafter, but a late \*  
 62 renewal fee shall be paid in addition to the renewal fee for  
 63 each profession.

64 Subd. 6. Repealed, Ex1967 c 28 s 9

65 Subd. 7. ENGINEER-IN-TRAINING; LAND

66 SURVEYOR-IN-TRAINING; LANDSCAPE ARCHITECT-IN-TRAINING. (1)

67 An applicant for certification as an engineer-in-training who is  
 68 a graduate with a bachelor of engineering degree from a school  
 69 or college having an engineering curriculum accredited by the  
 70 engineers' council for professional development or whose  
 71 education, in the opinion of the board, is equivalent thereto,  
 72 shall receive from the board, upon passing an examination in  
 73 fundamental engineering subjects, a certificate stating that ~~he~~ \*  
 74 the applicant has passed such examination and that ~~his~~ the \*

1 applicant's name has been recorded as an engineer-in-training. \*

2 (2) An applicant for certification as a land

3 surveyor-in-training who has had a minimum of four years of

4 qualifying experience of a character satisfactory to the board,

5 of which a formal education in an accredited engineering or land

6 surveying curriculum may constitute a part thereof, shall

7 receive from the board, upon passing a written examination in

8 the fundamentals of mathematics and the basic principles of land

9 surveying, a certificate stating that ~~he~~ the applicant has \*

10 passed such examination and that ~~his~~ the applicant's name has \*

11 been recorded as a land surveyor-in-training.

12 (3) Any applicant for certification as a landscape

13 architect-in-training who is a graduate with a degree from a

14 school or college having a landscape architecture curriculum

15 accredited by the American society of landscape architects

16 committee on education or who has had equivalent education or

17 experience or a combination thereof of a grade and character

18 acceptable to the board shall receive from the board, upon

19 passing an examination in fundamental landscape architectural

20 subjects, a certificate stating that ~~he~~ the applicant has passed \*

21 that examination and that ~~his~~ the applicant's name has been \*

22 recorded as a landscape architect-in-training.

326\*#11S

23 326.11 LICENSE SUSPENSION, REVOCATION, REISSUANCE,

24 REPLACEMENT.

25 Subdivision 1. REVOCATION OR SUSPENSION. The board

26 shall have the power to revoke or suspend the license of any

27 architect, engineer, land surveyor or landscape architect, who

28 is found guilty by the board of any fraud or deceit in obtaining

29 a license, or of attaching ~~his~~ the licensee's seal or signature \*

30 to any plan, specification, report, plat, or other

31 architectural, engineering, land surveying or landscape

32 architectural document not prepared by ~~him~~ the person signing or \*

33 sealing it or under ~~his~~ that person's direct supervision, or of \*

34 gross negligence, incompetency, or misconduct in the practice of

35 architecture, engineering, land surveying or landscape

36 architecture, or upon conviction of any violation of sections

37 326.02 to 326.15 or amendments thereof, or of any crime

38 involving moral turpitude or upon adjudication of insanity or

39 incompetency.

40 Subd. 2. Repealed, 1976 c 222 s 209

41 Subd. 3. Repealed, 1976 c 222 s 209

42 Subd. 4. Repealed, 1976 c 222 s 209

43 No change for subd 5 to 6

326\*#13S

44 326.13 PRACTICE EXEMPT.

45 Practice of architecture, engineering or land surveying in

46 this state prior to licensure by the board shall be permitted

47 under the following conditions and limitations:

48 (1) By any person or firm not a resident of and having no

49 established place of business in this state, or any person or

50 firm resident in this state, but whose arrival in the state is

51 recent; provided, however, such person or a person connected

52 with such firm:

53 (a) is registered or licensed and qualified to practice

54 such profession in a state or country to which the board grants

55 registration or licensure by comity in accordance with the

56 provisions of section 326.10, subdivision 1, clause (2); and

57 (b) shall have filed an application for licensure as an

58 architect or an engineer, shall have paid the fee provided for

59 in section 326.10, and shall have been notified by the board

60 that the applicant meets the requirements for licensure in this

61 state and is entitled to receive a license;

62 (c) notwithstanding the provisions of paragraph (b) and

63 prior to the notification provided for therein, an applicant who

64 meets the requirements of paragraph (a) shall be permitted to

65 practice in this state provided that such practice is limited

66 solely to solicitation of work within the terms of sections

67 326.02 to 326.15;

68 (2) Practice as an architect, an engineer, a land surveyor

69 or a landscape architect by any person not a resident of, and

70 having no established place of business in, this state, as a

71 consulting associate of an architect, an engineer, a land

72 surveyor or a landscape architect licensed under the provisions

73 of sections 326.02 to 326.15; provided, the non-resident is

74 licensed and qualified to practice ~~his~~ the profession in a state \*

1 or country to which the board grants licensure by comity in  
2 accordance with the provisions of section 326.10, subdivision 1,  
3 clause (2);

4 (3) Practice as an architect, an engineer, a land surveyor  
5 or a landscape architect solely as an officer or employee of the  
6 United States.

## 326\*#15S

7 326.15 FALSE IMPERSONATION.

8 It shall be unlawful for any person to present or attempt  
9 to use as ~~his~~ the person's own the seal or certificate of \*  
10 another, or to give false or forged evidence of any kind to the  
11 board, or any member thereof, or to falsely impersonate any  
12 registrant of like or different name, or to use or attempt to  
13 use as ~~his~~ the person's own the license of another issued by any \*  
14 authority outside of this state, or to use or attempt to use an  
15 expired or revoked or suspended license.

## 326\*#17S

16 326.17 BOARD OF ACCOUNTANCY.

17 A board of accountancy is created to carry out the purposes  
18 and enforce the provisions of sections 326.165 to 326.23. It  
19 consists of between seven and nine citizens of this state  
20 appointed by the governor as provided in this section. Two  
21 shall be public members as defined by section 214.02, five shall  
22 be currently licensed certified public accountants, and two  
23 shall be licensed public accountants under the provisions of  
24 sections 326.165 to 326.23. When the number of licensed public  
25 accountants in this state drops below 100, their representation  
26 on the board of accountancy shall drop to one and the board  
27 shall consist of two public members, five currently licensed  
28 certified public accountants, and one licensed public  
29 accountant. At the time when the number of licensed public  
30 accountants in this state drops below 25, the licensed public  
31 accountants shall lose their representation on the board, except  
32 that the licensed public accountant then serving on the board  
33 shall be allowed to complete ~~his~~ the term of office and the \*  
34 board shall consist of two public members and five currently  
35 licensed certified public accountants. Membership terms,  
36 compensation of members, removal of members, the filling of  
37 membership vacancies, and fiscal year and reporting requirements  
38 shall be as provided in sections 214.07 to 214.09. The  
39 provision of staff, administrative services and office space;  
40 the review and processing of complaints; the setting of board  
41 fees; and other provisions relating to board operations shall be  
42 as provided in chapter 214 and sections 326.165 to 326.23.

## 326\*#18S

43 326.18 BOARD, DUTIES, OFFICERS, EXAMINATIONS.

44 A majority of the board constitutes a quorum. The board  
45 shall elect one of its number as ~~chairman~~ chair, another as \*  
46 ~~vice-chairman~~ vice-chair, and another as secretary and \*  
47 treasurer, who shall hold their respective offices for a term of  
48 one year and until their successors are elected. The  
49 affirmative vote of a majority of members of the board is  
50 considered the action of the board. The board shall enforce the  
51 standard of general education; the standard of special education  
52 in the science and art of accounting; the standard of good  
53 character and general public experience, as prescribed in  
54 sections 326.165 to 326.23, in all examinations conducted  
55 thereunder. The board shall make rules for the conduct of  
56 applicants' examinations and the character and scope of the  
57 examinations, the method and time of filing applications for  
58 examinations and their form and contents, and all other rules  
59 and regulations proper to carry into effect the purposes of  
60 sections 326.165 to 326.23. The board may make use of all or  
61 any part of the uniform certified public accountant examination  
62 and advisory grading service provided by the American Institute  
63 of Certified Public Accountants if it deems it appropriate to  
64 assist it in performing its duties. These examinations shall be  
65 conducted by the board of accountancy. The examinations shall  
66 take place as often as may be convenient in the opinion of the  
67 board. The board may make rules necessary to implement and  
68 enforce sections 326.165 to 326.23, and 214.12, including but  
69 not limited to rules of professional conduct, pertaining to  
70 individuals, partnerships and corporations practicing public  
71 accounting which it deems consistent with or required by the  
72 public welfare and rules of continuing education to be met by  
73 persons licensed under sections 326.165 to 326.23.

1 The board shall keep records of its proceedings, an  
2 accurate list of all applications made, licenses and  
3 certificates issued, and licenses and certificates revoked, and  
4 shall keep proper financial records in which there shall be  
5 entered a complete statement of the cash receipts and  
6 disbursements. The board shall issue to each person who  
7 satisfies the examination requirements of section 326.19,  
8 subdivision 1, a certified public accountant certificate and  
9 shall maintain a record of that issuance. The board shall issue  
10 a license as a certified public accountant to each holder of a  
11 certified accountant certificate who satisfies the experience  
12 requirements for a license as a certified public accountant or  
13 to a person who has been issued a certified public accountant  
14 certificate under section 326.19, subdivision 3. The board  
15 shall maintain a record of the issuance. It shall adopt and  
16 provide itself with a seal with a band inscribed "Certified  
17 Public Accountant, State of Minnesota," with the coat of arms of  
18 Minnesota in the center, which seal shall be affixed to each  
19 certificate of certified public accountant issued under sections  
20 326.17 to 326.23. The board shall issue to each person who  
21 qualifies for a license under sections 326.17 to 326.23 as a  
22 licensed public accountant a certificate as a licensed public  
23 accountant and shall maintain a record of that issuance. It  
24 shall adopt and provide itself with a seal with a band inscribed  
25 "Licensed Public Accountant, State of Minnesota," with the coat  
26 of arms of Minnesota in the center, which seal shall be affixed  
27 to each certificate of the licensed public accountant, issued  
28 under sections 326.17 to 326.23. All records of the board shall  
29 be open to the inspection of the public at the office of its  
30 secretary.

326\*#191S

31 326.191 PUBLIC ACCOUNTANTS; LICENSING.

32 Any person: (i) who is a resident of this state or has a  
33 place of business in this state; (ii) who has attained the age  
34 of 18 years; (iii) who meets the requirements of clause (a),  
35 (b), (c), or (d) below shall so certify to the board on or  
36 before the first day of July, 1980, and shall thereafter be  
37 licensed by the board as a licensed public accountant:

38 (a) Persons who held themselves out to the public as public  
39 accountants and who were engaged within this state for a minimum  
40 of one year as of July 1, 1979 in the practice of public  
41 accounting as their principal occupation;

42 (b) Persons who for at least one year immediately prior to  
43 July 1, 1979 have been employees whose principal duty has been  
44 the practice of accounting for a certified public accountant or  
45 a public accountant engaged within this state in the practice of  
46 public accounting as his principal occupation; \*

47 (c) Persons who, for a minimum of one year as of July 1,  
48 1979, held senior level accounting or auditing positions in  
49 government which are equivalent, as determined by the board, to  
50 the practice of public accounting, and were required to  
51 successfully complete an examination in accountancy or obtain  
52 specific accounting experience or accounting education as a  
53 prerequisite for the position; or

54 (d) Persons serving in the armed forces of the United  
55 States of America on January 1, 1980, who for a minimum of one  
56 year immediately prior to entering the service held themselves  
57 out to the public as public accountants and were engaged within  
58 this state in the practice of public accounting as their  
59 principal occupation. In that case, the time for application  
60 for licensure shall be extended for a period of 12 months from  
61 the time the person is separated from active duty.

62 The board may license an applicant who does not meet the  
63 requirements of clause (a), (b), (c), or (d), but intends to  
64 practice full-time public accounting in this state, if the  
65 applicant is the holder of a license or registration as a public  
66 accountant issued by another state before July 1, 1979, which  
67 is, in the opinion of the board, equivalent to the licensure  
68 requirements for a public accountant in this state. A license  
69 under this paragraph may be issued only if the other state  
70 provides for similar recognition of public accountants of this  
71 state.

72 The board may, in its discretion, license applicants who  
73 do not, for reasons of individual hardship, meet the minimum  
74 experience requirement.

75 The board shall charge an initial licensure fee to be

1 determined by rule, to license a public accountant.  
 2 The board shall in each case determine whether the  
 3 applicant is eligible for a license. Any individual who is so  
 4 licensed and who holds a permit issued under this section shall  
 5 be styled and known as a "licensed public accountant".

326\*#20S

6 326.20 RENEWAL.

7 Subdivision 1. LICENSE RENEWAL OF CERTIFIED PUBLIC  
 8 ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS. Every holder of  
 9 a certified public accountant license or a licensed public  
 10 accountant license issued by the board, if ~~he-is~~ engaged, or  
 11 ~~intends~~ intending to be engaged, in public practice within this  
 12 state at any time during a calendar year shall renew ~~his~~ the  
 13 license as prescribed by the board by rule. \*

14 The board shall, upon application made by any holder of an  
 15 unrevoked Minnesota license as a certified public accountant or  
 16 license as a licensed public accountant, renew the license which  
 17 shall be good for a period prescribed by the board, unless the  
 18 said certificate or license shall sooner be revoked. Interim  
 19 licenses shall be issued to individuals who have satisfied the  
 20 provisions of sections 326.17 to 326.23 within the year.

21 No change for subd 2

22 Subd. 3. UNLICENSED PRACTICE. It shall be unlawful  
 23 for any certified public accountant or any partnership  
 24 containing one or more certified public accountants to engage in  
 25 public practice within this state unless such certified public  
 26 accountant or partnership is duly licensed as provided by this  
 27 section. A partnership shall be deemed in public practice  
 28 within this state if it performs professional accounting  
 29 services for a fee. A certified public accountant shall be  
 30 deemed in public practice within this state if ~~he~~ the accountant  
 31 performs professional accounting services for a fee within this  
 32 state. \*

326\*#211S

33 326.211 PROHIBITED ACTS.

34 Subdivision 1. Except as permitted by the board, no person  
 35 shall assume or use the title or designation "certified public  
 36 accountant," or the abbreviation "C.P.A." or any other title,  
 37 designation, words, letters, abbreviation, sign, card, or device  
 38 tending to indicate that the person is a certified public  
 39 accountant, unless the person has received a certificate as a  
 40 certified public accountant under sections 326.17 to 326.23,  
 41 holds a license issued under sections 326.17 to 326.23 which is  
 42 not revoked or suspended, and has all ~~of-his~~ offices in this  
 43 state for the practice of public accounting maintained and  
 44 licensed as required under section 326.20. \*

45 No change for subd 2 to 4

46 Subd. 5. No person, partnership, or corporation shall  
 47 assume or use the title or designation "certified accountant,"  
 48 "chartered accountant," "enrolled accountant," "licensed  
 49 accountant," "public accountant," "accredited accountant,"  
 50 "accounting practitioner," or any other title or designation  
 51 likely to be confused with "certified public accountant," or  
 52 "licensed public accountant," or any of the abbreviations  
 53 "C.A.," "L.A.," "P.A.," "R.A.," "A.A.," "A.P.," or similar  
 54 abbreviations likely to be confused with "C.P.A." or "L.P.A."  
 55 Anyone who holds a current license issued under sections 326.18  
 56 and 326.20 and all of whose offices in this state for the  
 57 practice of public accounting are maintained and licensed as  
 58 required under section 326.20 may hold ~~himself~~ out to the public  
 59 as an "auditor." \*

60 Subd. 6. ~~No person shall sign or affix his name or~~  
 61 person's name shall be signed or affixed by the person nor shall  
 62 any trade or assumed name be used by him-in-his-profession the  
 63 person professionally or in business to any opinion or  
 64 certificate attesting in any way to the reliability of any  
 65 representation or estimate in regard to any person or  
 66 organization embracing (1) financial information or (2) facts  
 67 respecting compliance with conditions established by law or  
 68 contract, including, but not limited to, statutes, ordinances,  
 69 regulations, grants, loans, and appropriations, together with  
 70 any wording accompanying or contained in the opinion or  
 71 certificate, which indicates (a) that ~~he~~ the person is an  
 72 accountant or auditor or (b) that ~~he~~ the person has expert  
 73 knowledge in accounting or auditing, ~~unless-he-holds~~ without  
 74 holding a current license issued under section 326.20 and all of \*

1 ~~his~~ the person's offices in this state for the practice of \*  
2 public accounting are maintained and licensed under section  
3 326.20. The provisions of this subdivision shall not prohibit  
4 any officer, employee, partner, or principal of any organization  
5 from affixing ~~his~~ that person's signature to any statement or \*  
6 report in reference to the affairs of the organization with any  
7 wording designating the position, title, or office which ~~he~~ the \*  
8 person holds in the organization, nor shall the provisions of \*  
9 this subdivision prohibit any act of a public official or public \*  
10 employee in the performance of ~~his~~ duties. \*

11 No change for subd 7

12 Subd. 8. No person, partnership or corporation not  
13 licensed under section 326.18 shall assume or use the title  
14 "auditor" on any sign, card, letterhead, or in any advertisement  
15 or directory without indicating thereon or therein that the  
16 person, partnership or corporation does not hold such a license,  
17 provided that this subdivision shall not prohibit any officer,  
18 employee, partner, or principal of any organization from  
19 ~~describing-himself~~ being described by the position, title, or \*  
20 office ~~he~~ that person holds in the organization, nor shall this \*  
21 subdivision prohibit any act of a public official or public \*  
22 employee in the performance of ~~his~~ duties. \*

23 Subd. 9. No person shall assume or use the title or  
24 designation "certified public accountant" or "licensed public  
25 accountant" in conjunction with names indicating or implying  
26 that there is a partnership, or in conjunction with the  
27 designation "and Company" or "and Co." or a similar designation  
28 if, in any such case, there is in fact no bona fide partnership  
29 licensed under section 326.20. A sole proprietor or partnership  
30 lawfully using the title or designation in conjunction with the  
31 names or designation on July 1, 1980 may continue to do so if ~~he~~ \*  
32 ~~or-it~~ otherwise complies in compliance with the provisions of \*  
33 sections 326.165 to 326.23. \*

34 No change for subd 10

326\*#212S

35 326.212 PERMITTED ACTS.

36 Subdivision 1. Nothing contained in sections 326.17 to  
37 326.23 shall prohibit any person not a certified public  
38 accountant or licensed public accountant from serving as an  
39 employee of, or an assistant to, a certified public accountant  
40 or licensed public accountant, or partnership or corporation  
41 composed of certified public accountants or licensed public  
42 accountants, provided that the ~~employee-or-assistant~~ person \*  
43 shall not issue any accounting or financial statement over ~~his~~ \*  
44 the person's name. \*

45 No change for subd 2 to 5

326\*#22S

46 326.22 FEES.

47 Subdivision 1. EXAMINATION AND LICENSE RENEWAL. The  
48 state board of accountancy shall charge for each examination and  
49 certificate provided for in sections 326.17 to 326.23 a fee to  
50 be prescribed in the rules of the board, to meet the expenses of  
51 such examination. This fee shall be payable by the applicant at  
52 the time of making ~~his~~ initial application, and no additional \*  
53 charge shall be made for the issuance of a certificate to any  
54 applicant. \*

55 No change for subd 2 to 3

326\*#224S

56 326.224 SINGLE ACT EVIDENCE OF PRACTICE.

57 Displaying or presenting a card, sign, advertisement, or  
58 other printed, engraved, or written instrument or device bearing  
59 a person's name in conjunction with the words "certified public  
60 accountant" or any abbreviation thereof, or "licensed public  
61 accountant" or any abbreviation thereof, except as permitted by  
62 Laws 1979, Chapter 326, Sections 1 to 13, shall be prima facie  
63 evidence in any action brought under sections 326.17 to 326.23  
64 and Laws 1979, Chapter 326, Sections 1 to 12 that the person  
65 whose name is so displayed caused or procured the displaying or  
66 presenting of the card, sign, advertisement, or other printed,  
67 engraved, or written instrument or device, and that the person  
68 is holding ~~himself~~ out to be a certified public accountant or a \*  
69 licensed public accountant. In any action evidence of the  
70 commission of a single act prohibited by Laws 1979, Chapter 326,  
71 Sections 1 to 13 and Minnesota Statutes, Sections 326.17 to  
72 326.23 shall be sufficient to justify an injunction or a  
73 conviction without evidence of a general course of conduct. \*

326\*#242S

1 326.242 LICENSES.

2 Subdivision 1. MASTER ELECTRICIAN. Except as  
3 otherwise provided by law, no person shall, for another plan,  
4 install, repair, lay out, or supervise the installation of  
5 wiring, apparatus, or equipment for electrical light, heat,  
6 power, or other purposes unless ~~he-is~~ licensed by the board as a \*  
7 master electrician.

8 (1) An applicant for a Class A master electrician's license  
9 shall (a) be a graduate of a four-year electrical course in an  
10 accredited college or university; or (b) shall have had at least  
11 one year's experience, acceptable to the board, as a licensed  
12 journeyman; or (c) shall have had at least five years'  
13 experience, acceptable to the board, in planning for, laying  
14 out, supervising and installing wiring, apparatus, or equipment  
15 for electrical light, heat and power.

16 (2) As of August 1, 1985, no new Class B master  
17 electrician's licenses shall be issued. An individual who has a  
18 Class B master electrician's license as of August 1, 1985 may  
19 retain the license and exercise the privileges it grants, which  
20 include electrical work limited to single phase systems, not  
21 over 200 amperes in capacity, on farmsteads or single-family  
22 dwellings located in towns or municipalities with fewer than  
23 2,500 inhabitants.

24 Subd. 2. JOURNEYMAN ELECTRICIAN. Except as otherwise  
25 provided by law, no pers shall, for another, wire for,  
26 install, or repair electrical wiring, apparatus, or equipment,  
27 unless ~~he-is~~ licensed by the board as a journeyman electrician \*  
28 employed by a licensed electrical contractor.

29 (1) An applicant for a Class A journeyman electrician's  
30 license shall have had at least four years of experience,  
31 acceptable to the board, in wiring for, installing, and  
32 repairing electrical wiring, apparatus, or equipment, provided  
33 however, that the board may by rule or regulation provide for  
34 the allowance of one year of experience credit for successful  
35 completion of a two-year post high school electrical course  
36 approved by the board.

37 (2) As of August 1, 1985, no new Class B journeyman  
38 electrician's licenses shall be issued. An individual who holds  
39 a Class B journeyman electrician's license as of August 1, 1985  
40 may retain the license and exercise the privileges it grants,  
41 which include electrical work limited to single phase systems,  
42 not over 200 amperes in capacity, on farmsteads or on  
43 single-family dwellings located in towns or municipalities with  
44 fewer than 2,500 inhabitants.

45 No change for subd 3 to 3b

46 Subd. 3c. BOND. Every installer, as a condition of  
47 ~~his-license~~ licensure, shall give bond to the state in the sum \*  
48 of \$1,000 conditioned upon the faithful and lawful performance \*  
49 of all work contracted for or entered upon by him the installer  
50 within the state of Minnesota, and such bond shall be for the  
51 benefit of persons injured or suffering financial loss by reason  
52 of failure of such performance. Such bond shall be in lieu of  
53 all other license bonds to any political subdivision of the  
54 state. Such bond shall be written by a corporate surety  
55 licensed to do business in the state of Minnesota.

56 Subd. 4. SPECIAL ELECTRICIAN. Notwithstanding the  
57 provisions of subdivisions 1, 2, 6, and 7, the board shall by  
58 rule or regulation provide for the issuance of special  
59 electrician licenses empowering the licensee to engage in a  
60 limited class or classes of electrical work, which class or  
61 classes shall be specified on the license certificate. Each  
62 licensee shall have had at least two years of experience,  
63 acceptable to the board, in each such limited class of work for  
64 which ~~he~~ the licensee is licensed. \*

65 No change for subd 5

66 Subd. 6. CONTRACTORS. Except as otherwise provided  
67 by law, no person other than an employee of a licensed  
68 electrical contractor as defined by section 326.01, subdivision  
69 5, shall undertake or offer to undertake for another to plan  
70 for, lay out, supervise or install or to make additions,  
71 alterations, or repairs in the installation of wiring apparatus  
72 and equipment for electrical light, heat, or power with or  
73 without compensation ~~unless-he-shall-obtain~~ without obtaining an \*  
74 electrical contractor's license. Such license shall be issued  
75 by the board upon the contractor's giving bond to the state in

1 the penal sum of \$5,000 conditioned upon the faithful and lawful  
 2 performance of all work entered upon by ~~him~~ the contractor \*  
 3 within the state of Minnesota and such bond shall be for the  
 4 benefit of persons injured or suffering financial loss by reason  
 5 of failure of such performance. The bond shall be filed with  
 6 the board and shall be in lieu of all other license bonds to any  
 7 political subdivision. Such bond shall be written by a  
 8 corporate surety licensed to do business in the state of  
 9 Minnesota.

10 Each licensed electrical contractor shall have and maintain  
 11 in effect general liability insurance, which includes premises  
 12 and operations insurance and products and completed operations  
 13 insurance, with limits of at least \$100,000 per occurrence,  
 14 \$300,000 aggregate limit for bodily injury, and property damage  
 15 insurance with limits of at least \$25,000 or a policy with a  
 16 single limit for bodily injury and property damage of \$300,000  
 17 per occurrence and \$300,000 aggregate limits. Such insurance  
 18 shall be written by an insurer licensed to do business in the  
 19 state of Minnesota and each licensed electrical contractor shall  
 20 maintain on file with the board a certificate evidencing such  
 21 insurance which provides that such insurance shall not be  
 22 canceled without the insurer first giving 15 days written notice  
 23 to the board of such cancellation.

24 No contractor shall engage in business unless ~~he~~ the \*  
 25 contractor is of ~~has-in-his-employ~~ employs a licensed Class A \*  
 26 master or Class B master electrician, who shall be responsible  
 27 for the performance of all electrical work in accordance with  
 28 the requirements of this Act, and the classes of work for which  
 29 the licensed electrical contractor is authorized shall be  
 30 limited to those for which such Class A master, or Class B  
 31 master employed by ~~him~~ the contractor is licensed. \*  
 32 When an electrical contractor's license is held by an individual,  
 33 partnership, or corporation and the individual, one of the  
 34 partners, or an officer of the corporation, respectively, is not  
 35 the responsible master electrician of record, all requests for  
 36 inspection shall be signed by the responsible master electrician  
 37 of record. The application for an electrical contractor's  
 38 license must include a verified statement that the designated  
 39 responsible master electrician is a full-time employee of the  
 40 individual, partnership, or corporation which is applying for an  
 41 electrical contractor's license. For purposes of this  
 42 subdivision, a full-time employee of a licensed electrical  
 43 contractor is an individual who is not employed in any capacity  
 44 as a licensed electrician by any other electrical contractor.

45 Subd. 7. EXAMINATION. In addition to the  
 46 requirements imposed herein and except as herein otherwise  
 47 provided, as a precondition to issuance of an electrician's  
 48 license, each applicant must pass a written or oral examination  
 49 given by the board to insure the competence of each applicant  
 50 for license. An oral examination shall be administered only to  
 51 an applicant who furnishes a written statement from a certified  
 52 teacher or other professional, trained in the area of reading  
 53 disabilities stating that the applicant has a specific reading  
 54 disability which would prevent the applicant from performing  
 55 satisfactorily on a written test. The oral examination shall be  
 56 structured so that an applicant who passes the examination will  
 57 not impair the applicant's own safety ~~of-himself~~ or that of \*  
 58 others while acting as an electrician. No person failing an  
 59 examination may retake it for six months thereafter, but within \*  
 60 such six months ~~he~~ the person may take an examination for a \*  
 61 lesser grade of license. Any licensee failing to renew ~~his~~ a \*  
 62 license for two years or more after its expiration shall be \*  
 63 required to retake the examination before ~~he-is~~ being issued a \*  
 64 new license.

65 An applicant for journeyman's or special electrician's  
 66 license who shall furnish evidence satisfactory to the board  
 67 ~~that-he-has~~ of having the requisite experience, upon written \*  
 68 application, payment of the examination fee and fulfillment of  
 69 all other requirements stated herein, may work as a journeyman  
 70 or special electrician until the examination next following and  
 71 the announcement of the results of such latter examination by  
 72 the board.

73 No change for subd 8 to 9

74 Subd. 10. CONTINUATION OF BUSINESS BY ESTATES. Upon  
 75 the death of a master who is an electrical contractor the board  
 76 may permit ~~his~~ the decedent's representative to carry on the \*



1 business of the decedent for a period not in excess of six  
 2 months, for the purpose of completing work under contract or  
 3 otherwise to comply with this act. The representative shall  
 4 give such bond as the board may require conditioned upon the  
 5 faithful and lawful performance of such work and such bond shall  
 6 be for the benefit of persons injured or suffering financial  
 7 loss by reason of failure of such performance. Such bond shall  
 8 be written by a corporate surety licensed to do business in the  
 9 state of Minnesota. Such representative shall also comply with  
 10 all public liability and property damage insurance requirements  
 11 imposed by this chapter upon a licensed electrical contractor.

12 No change for subd 11

13 Subd. 12. EXEMPTIONS FROM LICENSING. (a) A  
 14 maintenance electrician who is supervised by a master  
 15 electrician or an electrical engineer registered with the board  
 16 and who is an employee of an employer and is engaged in the  
 17 maintenance, and repair of electrical equipment, apparatus, and  
 18 facilities owned or leased by ~~his~~ the employer, and performed \*  
 19 within the limits of property which is owned or leased and  
 20 operated and maintained by said employer, shall not be required  
 21 to hold or obtain a license under sections 326.241 to 326.248;  
 22 or

23 (b) Employees of a licensed alarm and communication  
 24 contractor are not required to hold a license under sections  
 25 326.241 to 326.248 while performing work authorized to be  
 26 conducted by an alarm and communication contractor; or

27 (c) Employees of any electric, communications, or railway  
 28 utility, or a telephone company as defined under section 237.01  
 29 or its employees, or of any independent contractor performing  
 30 work on behalf of any such utility or telephone company, shall  
 31 not be required to hold a license under sections 326.241 to  
 32 326.248:

33 1. While performing work on installations, materials, or  
 34 equipment which are owned or leased, and operated and maintained  
 35 by such utility or telephone company in the exercise of its  
 36 utility or telephone function, and which

37 (i) are used exclusively for the generation,  
 38 transformation, distribution, transmission, or metering of  
 39 electric current, or the operation of railway signals, or the  
 40 transmission of intelligence and do not have as a principal  
 41 function the consumption or use of electric current by or for  
 42 the benefit of any person other than such utility or telephone  
 43 company, and

44 (ii) are generally accessible only to employees of such  
 45 utility or telephone company or persons acting under its control  
 46 or direction; or

47 2. While performing work on installations, materials, or  
 48 equipment which are a part of the street lighting operations of  
 49 such utility; or

50 3. While installing or performing work on outdoor area  
 51 lights which are directly connected to a utility's distribution  
 52 system and located upon the utility's distribution poles, and  
 53 which are generally accessible only to employees of such utility  
 54 or persons acting under its control or direction.

326\*#244S

55 326.244 INSPECTION.

56 No change for subd 1 to 1a

57 Subd. 2. PROCEDURE. (a) At or before commencement of  
 58 any installation required to be inspected by the board, the  
 59 electrical contractor, installer, special electrician, or owner  
 60 making the installation shall submit to the board a request for  
 61 inspection, in a form prescribed by the board, together with the  
 62 fees required for the installation. For purposes of this  
 63 subdivision, an owner is a person who physically performs all  
 64 the electrical work on premises ~~he-or-she~~ the person owns and \*  
 65 actually occupies as ~~his-or-her~~ a residence or ~~that-he-or-she~~ \*  
 66 will own and actually occupy as ~~his-or-her~~ a residence upon \*  
 67 completion of construction.

68 (b) The fees required are a handling fee and an inspection  
 69 fee. The handling fee shall be set by the board in an amount  
 70 sufficient to pay the cost of printing and handling the form  
 71 requesting an inspection. The inspection fee shall be set by  
 72 the board in an amount sufficient to pay the actual costs of the  
 73 inspection and the board's costs in administering the  
 74 inspection. All fees shall be set pursuant to the procedure of  
 75 sections 14.01 to 14.70.

1 (c) All handling fees shall be deposited in the general  
 2 fund. All inspection fees collected pursuant to this section  
 3 shall be deposited by the board in a special revenue bookkeeping  
 4 account of the treasury and are appropriated to the board for  
 5 the purpose of compensating contract inspectors for inspections  
 6 performed, for transfer to the general fund of the portion of  
 7 the fee representing inspection administration costs, and for  
 8 making refunds.

9 (d) If the inspector finds that the installation is not in  
 10 compliance with accepted standards of construction for safety to  
 11 life and property as required by section 326.243, the inspector  
 12 shall by written order condemn the installation or noncomplying  
 13 portion thereof, or order service to the installation  
 14 disconnected, and shall send a copy of the order to the board.  
 15 If the installation or the noncomplying part will seriously and  
 16 proximately endanger human life and property, the order of the  
 17 inspector, when approved by the inspector's superior, shall  
 18 require immediate condemnation or disconnection. In all other  
 19 cases, the order of the inspector shall permit a reasonable  
 20 opportunity for the installation to be brought into compliance  
 21 with accepted standards of construction for safety to life and  
 22 property prior to the effective time established for  
 23 condemnation or disconnection.

24 (e) Copies of each condemnation or disconnection order  
 25 shall be served personally or by mail upon the property owner,  
 26 and the electrical contractor, installer, or special electrician  
 27 making the installation, and other persons as the board by rule  
 28 or regulation may direct. An aggrieved party may appeal any  
 29 condemnation or disconnection order by filing with the board a  
 30 notice of appeal within ten days after (1) service upon the  
 31 aggrieved party of the condemnation or disconnection order, if  
 32 this service is required, or (2) filing of the order with the  
 33 board, whichever is later. The appeal shall proceed and the  
 34 order of the inspector shall have the effect the order, by its  
 35 terms, and the rules of the board provides. The board shall  
 36 adopt rules providing procedures for the conduct of appeals,  
 37 including provisions for the stay of enforcement of the order of  
 38 the inspector pending such appeal when justified by the  
 39 circumstances.

40 No change for subd 3 to 5

326\*#246S

41 326.246 CRIMES.

42 It is a misdemeanor knowingly and willfully to commit, or  
 43 to order, instruct, or direct another to commit, any of the  
 44 following acts:

45 (1) to make a false statement in any license application,  
 46 request for inspection, certificate or other lawfully authorized  
 47 or required form or statement provided by sections 326.241 to  
 48 326.248;

49 (2) to perform electrical work for another without a proper  
 50 license for such work;

51 (3) to fail to file a request for inspection when required;

52 (4) to interfere with, or refuse entry to, an inspector  
 53 lawfully engaged in the performance of his duties; and \*

54 (5) to violate any lawful statute, rule, or order of the  
 55 board, or any city ordinance which pertains to powers given to  
 56 political subdivisions under section 326.244, subdivision 4.

326\*#32S

57 326.32 DEFINITIONS.

58 No change for subd 1 to 3

59 Subd. 4. "Chairman Chair" means the board member  
 60 designated by the board to act in the capacity of board chairman  
 61 chair. \*

62 No change for subd 5 to 11

326\*#33S

63 326.33 BOARD OF PRIVATE DETECTIVE AND PROTECTIVE AGENT  
 64 SERVICES.

65 Subdivision 1. MEMBERS; MEETINGS. There is hereby  
 66 created a board of private detective and protective agent  
 67 services, consisting of the superintendent of the bureau of  
 68 criminal apprehension or a departmental employee designated by  
 69 ~~him~~ the superintendent, a licensed protective agent, a licensed  
 70 private detective, and two public members appointed by the  
 71 commissioner of public safety. Membership terms, compensation  
 72 of members, removal of members, the filling of membership  
 73 vacancies, and fiscal year and reporting requirements shall be \*

1 as provided in sections 214.07 to 214.09. The provision of  
2 staff, administrative services and office space; the review and  
3 processing of complaints; the setting of board fees; and other  
4 provisions relating to board operations shall be as provided in  
5 chapter 214.

6 The board members shall meet as they deem necessary and  
7 conduct such business ascribed to the board by the provisions of  
8 sections 326.331 to 326.339. The board shall designate one of  
9 the board members to fulfill the capacity of board chairman  
10 chair who will remain in the capacity of chairman chair for a \*  
11 term of one year. The board shall have the option of retaining \*  
12 or replacing a board member as chairman chair. \*

13 No change for subd 2

14 Subd. 3. REVIEW OF APPLICATIONS. It shall be the  
15 duty of the board to receive and review all applications for  
16 private detective and protective agent licenses and render  
17 approval or denial of the issuance of such licenses within the  
18 intent of sections 326.331 to 326.339.

19 (1) Upon conducting a board review of the application the  
20 board may approve the application for licensing and shall  
21 subsequently issue a license.

22 (2) Upon conducting a board review of the application the  
23 board may deny the application for licensing on the grounds that  
24 the applicant does not conform to the provisions of sections  
25 326.331 to 326.339.

26 (3) Upon denial of a license the board chairman chair shall \*  
27 notify the applicant of the board finding and the facts and  
28 circumstances that constitute the board finding. The board  
29 chairman chair shall advise the applicant of the right of the \*  
30 applicant to a hearing pursuant to chapter 14.

31 No change for subd 4 to 6

326\*#331S

32 326.331 LICENSES.

33 No person shall engage in the business of private  
34 detective, investigator, or protective agent for hire, fee or  
35 reward, or advertise or indicate in any letter, document or  
36 verbally that ~~he~~ the person is so engaged or available to supply \*  
37 such services without having first obtained a license as herein  
38 provided. Any person desiring to engage in such business shall  
39 apply to the board of private detective and protective agent  
40 services for a license. Upon application by any person  
41 qualified under sections 326.331 to 326.339 to engage in such  
42 business, the board of private detective and protective agent  
43 services shall issue such a license for a period of two years  
44 upon the conditions herein set forth, such license to continue  
45 for said period so long as such license holder remains a  
46 qualified person and complies with the provisions of sections  
47 326.331 to 326.339 and with the laws of Minnesota. No person  
48 shall be deemed qualified to hold such a license who has been  
49 convicted of felony by the courts of this or any other state or  
50 of the United States, or who has been convicted anywhere of acts  
51 which if done in Minnesota would be assault, theft, larceny,  
52 unlawful entry, extortion, defamation, buying or receiving  
53 stolen property, using, possessing, or carrying weapons or  
54 burglar tools or escape, or who has been convicted in any other  
55 country of acts which if done in Minnesota would be a felony or  
56 would be any of the other offenses specified above, nor shall  
57 any person who shall make any false statement in any application  
58 for license hereunder be deemed a qualified person to hold any  
59 such license. No other license shall be required by any other  
60 political unit or subdivision.

61 If the applicant for a license is a corporation or  
62 partnership, one member of that corporation or partnership must  
63 meet the qualifications for a license as provided in sections  
64 326.331 to 326.339. This member must be engaged in the  
65 operation and supervision of the business.

66 ~~if the applicant's~~ An applicant whose home office is \*  
67 outside Minnesota, and ~~he~~ who establishes a Minnesota office, ~~he~~ \*  
68 shall provide a manager for the Minnesota branch office who  
69 meets the qualifications for a license as provided in sections  
70 326.331 to 326.339. The branch manager must be actively engaged  
71 in the operation and supervision of the branch office.

326\*#334S

72 326.334 FEES; LICENSING PROCEDURE.

73 No change for subd 1

74 Subd. 2. It shall be the duty of the bureau of criminal

1 apprehension to compare such fingerprints with state criminal  
2 identification records, to conduct a sufficient investigation of  
3 the persons signing such application so as to determine their  
4 competence, character and fitness for such a license, and to  
5 report ~~his~~ findings to the board. \*

6 Subd. 3. Repealed, 1976 c 222 s 209

7 Subd. 4. If a license holder moves ~~his~~ an office or agency  
8 to an address other than that described in the license  
9 certificate, ~~he~~ the holder shall, within 24 hours immediately  
10 following such move, send ~~his~~ the license certificate, together  
11 with written notice to the board, which notice shall describe  
12 the premises to which such move is made and the date on which it  
13 was made. Upon receipt of such certificate and notice the board  
14 shall endorse on the face thereof the date of such change and  
15 the new registered address of such office or agency, and shall  
16 return the certificate to the license holder.

17 No change for subd 5 to 7

326\*#336S

18 326.336 EMPLOYEES OF LICENSE HOLDERS.

19 Subdivision 1. A license holder may employ, in connection  
20 with the business of private detective or protective agent, as  
21 many unlicensed persons as may be necessary; provided however,  
22 that every license holder is at all times accountable for the  
23 good conduct of every person employed ~~by-him~~ in connection with  
24 the business of private detective or protective agent. \*

25 Subd. 2. An identification card shall be issued to each  
26 employee of a private detective agency or protective agency and  
27 shall be in ~~his~~ the employee's possession at all times. Such  
28 identification card shall be issued by the license holder and  
29 contain the license holder's logo, corporate or company name,  
30 duly signed by the license holder or branch manager, the office  
31 address of the license holder or Minnesota branch of said  
32 license holder, the employee's photograph, and physical  
33 description, and shall bear the employee's signature. No  
34 identification card shall bear the word "police" or any other  
35 marking indicating the holder is a member of a police department  
36 or peace officer. The issuing agency shall have its name  
37 printed in full on said card and no initials that would  
38 correspond with municipal, state or federal law enforcement  
39 agencies shall be printed thereon.

40 Subd. 3. Any person who shall be issued an identification  
41 card, badge, holster, weapon, shield or any other equipment  
42 bearing the name, trademark or trade name, or any combination  
43 thereof, of any licensed agency, or indicating that such person  
44 is a private detective, private protective agent, or employee of  
45 same, who does not return such badge, weapon, holster,  
46 identification card, uniform emblem, or other equipment to the  
47 owner thereof within ten days of the termination of ~~his~~  
48 employment, or ~~the-receipt-by-him~~ of receiving a written request  
49 to return same, made by certified mail to ~~his~~ the person's last  
50 known address, whichever shall last occur, shall be guilty of a  
51 misdemeanor. \*

52 Subd. 4. No employee of any license holder shall divulge  
53 to anyone other than ~~his~~ the employer, or as ~~his~~ the employer  
54 shall direct, except as ~~he~~ may be required by law, any  
55 information acquired ~~by-him~~ during such employment in respect of  
56 any matter or investigation undertaken or done by such  
57 employer. Any employee who shall make any false statement  
58 in ~~his~~ an employment statement or who willfully makes a false  
59 report to ~~his~~ the employer in respect to any matter in the  
60 course of ~~his~~ the employer's business, or who shall otherwise  
61 violate the provisions of this subdivision is guilty of a  
62 misdemeanor. \*

326\*#337S

63 326.337 VIOLATIONS; PENALTY.

64 No change for subd 1 to 2

65 Subd. 3. It is unlawful for any agent or employee of a  
66 license holder to display, wear any badge or emblem, or to  
67 purport ~~himself-as-being~~ to be a private detective or protective  
68 agent, except as may be directed by the license holder. \*

69 Subd. 4. A private detective or protective agent licensed  
70 under the provisions of sections 326.331 to 326.339 and Laws  
71 1974, chapter 310, may, in the course and conduct of ~~his~~  
72 business, carry a firearm in any municipality of the state ~~if-he~~  
73 ~~has-met~~ on meeting the registration and licensing requirements  
74 regarding firearms of a municipality wherein registration and \*

1 licensing is a requirement.

2 No change for subd 3

326\*#338S

3 326.338 PERSONS ENGAGED AS PRIVATE DETECTIVES OR  
4 PROTECTIVE AGENTS.

5 No change for subd 1

6 Subd. 2. Any person who shall furnish, for hire or reward,  
7 watchmen security guards or other guards or private patrolmen  
8 patrol officers or other persons to protect other persons or  
9 their property or to prevent the theft, unlawful taking of  
10 goods, merchandise or money, or to prevent the misappropriation  
11 or concealment of goods, merchandise, money, choses in action,  
12 or other valuable things, or to procure the return thereof;  
13 shall be deemed engaged in the business of protective agent,  
14 provided that no person engaged exclusively in making  
15 investigations and reports respecting the financial rating and  
16 credit responsibility of persons or corporations engaged in  
17 business, or respecting financial rating, credit responsibility  
18 and character of applicants for insurance, indemnity bonds or  
19 commercial credit, shall be deemed engaged in such business or  
20 that of private detective, nor shall any employee or peace  
21 officer of the United States or of this or any state while in  
22 the discharge of his official duties, nor any attorney at law  
23 engaged in the discharge of his professional duties, nor any  
24 full-time employee making investigations respecting pending or  
25 possible claims against his an employer be deemed engaged in  
26 such business. A licensed private detective may perform those  
27 duties attributable to a protective agent without obtaining any  
28 additional license.

\*  
\*  
\*  
\*  
\*

29 No change for subd 3

326\*#40S

30 326.40 LICENSING, BOND AND INSURANCE.

31 Subdivision 1. PLUMBERS MUST BE LICENSED IN CERTAIN  
32 CITIES; MASTER AND JOURNEYMAN PLUMBERS; PLUMBING ON ONE'S OWN  
33 PREMISES; RULES FOR EXAMINATION. In any city now or hereafter  
34 having 5,000 or more population, according to the last federal  
35 census, and having a system of waterworks or sewerage, no  
36 person, firm, or corporation shall engage in or work at the  
37 business of a master plumber or journeyman plumber unless  
38 licensed to do so by the state commissioner of health. A master  
39 plumber may also work as a journeyman plumber. Anyone not so  
40 licensed may do plumbing work which complies with the provisions  
41 of the minimum standard prescribed by the state commissioner of  
42 health on premises or that part of premises owned and actually  
43 occupied by him the worker as his a residence, unless otherwise  
44 forbidden to do so by a local ordinance.

\*

45 In any such city no person, firm, or corporation shall  
46 engage in the business of installing plumbing nor install  
47 plumbing in connection with the dealing in and selling of  
48 plumbing material and supplies unless at all times a licensed  
49 master plumber, who shall be responsible for proper  
50 installation, is in charge of the plumbing work of the person,  
51 firm, or corporation.

52 The department of health shall prescribe rules, not  
53 inconsistent herewith, for the examination and licensing of  
54 plumbers.

55 Subd. 2. MASTER PLUMBER'S LICENSE; BOND AND INSURANCE  
56 REQUIREMENTS. The applicant for a master plumber license may  
57 give bond to the state in the total penal sum of \$2,000  
58 conditioned upon the faithful and lawful performance of all work  
59 entered upon him within the state. The bond shall be for the  
60 benefit of persons injured or suffering financial loss by reason  
61 of failure of performance. The term of the bond shall be  
62 concurrent with the term of the license. The bond shall be  
63 filed with the secretary of state and shall be in lieu of all  
64 other license bonds to any political subdivision. The bond  
65 shall be written by a corporate surety licensed to do business  
66 in the state.

\*

67 In addition, each applicant for a master plumber license or  
68 renewal thereof, may provide evidence of public liability  
69 insurance, including products liability insurance with limits of  
70 at least \$50,000 per person and \$100,000 per occurrence and  
71 property damage insurance with limits of at least \$10,000. The  
72 insurance shall be written by an insurer licensed to do business  
73 in the state of Minnesota and each licensed master plumber shall  
74 maintain on file with the state commissioner of health a

1 certificate evidencing the insurance providing that the  
2 insurance shall not be cancelled without the insurer first  
3 giving 15 days written notice to the commissioner. The term of  
4 the insurance shall be concurrent with the term of the license.  
5 The certificate shall be in lieu of all other certificates  
6 required by any political subdivision for licensing purposes.

7 Subd. 3. BOND AND INSURANCE EXEMPTION. A master  
8 plumber who is an employee of a master plumber or who is an  
9 employee engaged within the limits of property owned, leased and  
10 operated, or maintained by ~~his~~ the employer, in the maintenance \*  
11 and repair of plumbing equipment, apparatus, or facilities owned  
12 or leased by the employer, shall not be required to meet the  
13 bond and insurance requirements of subdivision 2.

14 No change for subd 4 to 5

326\*#42S

15 326.42 APPLICATIONS, FEES.

16 Applications for plumber's license shall be made to the  
17 state commissioner of health, with fee. Unless the applicant is \*  
18 entitled to a renewal, ~~he~~ the applicant shall be licensed by the  
19 state commissioner of health only after passing a satisfactory  
20 examination by the examiners showing fitness. Examination fees  
21 for both journeyman and master plumbers shall be in an amount  
22 prescribed by the state commissioner of health pursuant to  
23 section 144.122. Upon being notified that ~~he~~ has of having \*  
24 successfully passed the examination for original license the  
25 applicant shall submit an application, with the license fee  
26 herein provided. License fees shall be in an amount prescribed  
27 by the state commissioner of health pursuant to section  
28 144.122. Licenses shall expire and be renewed as prescribed by  
29 the commissioner pursuant to section 144.122.

326\*#48S

30 326.48 PIPEFITTERS MUST BE LICENSED.

31 No change for subd 1

32 Subd. 2. CONTRACTING PIPEFITTER'S LICENSE; BOND AND  
33 INSURANCE REQUIREMENTS. The applicant for a contracting  
34 pipefitter license may give bond to the state in the total penal  
35 sum of \$2,000 conditioned upon the faithful and lawful  
36 performance of all work entered upon ~~by-him~~ within the state. \*  
37 The bond shall be for the benefit of persons injured or  
38 suffering financial loss by reason of failure of performance.  
39 The term of the bond shall be concurrent with the term of the  
40 license. The bond shall be filed with the secretary of state of  
41 the state and shall be in lieu of all other license bonds to any  
42 political subdivision. The bond shall be written by a corporate  
43 surety licensed to do business in the state.

44 In addition, each applicant for a contracting pipefitter's  
45 license or renewal thereof, may provide evidence of public  
46 liability insurance, including products liability insurance,  
47 with limits of at least \$50,000 per person and \$100,000 per  
48 occurrence and property damage insurance with limits of at least  
49 \$10,000. The insurance shall be written by an insurer licensed  
50 to do business in the state and each licensed contracting  
51 pipefitter shall maintain on file with the department, a  
52 certificate evidencing the insurance which provides that the  
53 insurance shall not be canceled without the insurer first giving  
54 15 days written notice to the department. The term of the  
55 insurance shall be concurrent with the term of the license. The  
56 certificate shall be in lieu of all other certificates required  
57 by any political subdivision for licensing purposes.

58 No change for subd 3 to 5

326\*#523S

59 326.523 LICENSE PROVISIONS; DISTRIBUTION; CANCELATION.

60 No distributor shall hereafter license feature motion  
61 picture films to an exhibitor to be exhibited, shown or  
62 performed in this state unless the license provides:

63 (1) That all the feature motion picture films, which such  
64 distributor will license during the exhibition season, or the  
65 unexpired portion thereof, shall be included: the term "all the  
66 feature motion picture films" applies to each producer for whom  
67 the distributor is acting; and

68 (2) That the exhibitor shall have the right to cancel a  
69 minimum of 20 percent of the total number of feature motion  
70 pictures included in such license where the exhibitor deems the  
71 same injurious and damaging to ~~his~~ business or offensive on \*  
72 moral, religious, or racial grounds.

73 The cancelation shall be made proportionately among the

1 several price brackets, if there be such price brackets in the  
2 license agreement. Any number of cancelation to which an  
3 exhibitor is entitled, may be made the lowest price bracket at  
4 the exhibitor's option.

5 The right to cancelation shall not be effective, unless the  
6 exhibitor exercises such right by giving notice thereof, to the  
7 distributor, by certified mail, within 15 days after being  
8 notified of the availability of a feature motion picture. In  
9 determining the number of feature motion pictures that may be  
10 canceled, fractions of one-half or more shall be counted as one  
11 and fractions of less than one-half shall not be counted.

326\*#55S

12 326.55 NONPAYMENT OF LICENSE FEES.

13 No change for subd 1

14 Subd. 2. MEMBERS OF ARMED FORCES NEED NOT PAY LICENSE  
15 FEES. Any person required by law to be licensed or

16 registered in order to carry on or practice a trade, employment,  
17 occupation or profession in the state of Minnesota who is also  
18 required by law to renew ~~his~~ the license or certificate of \*  
19 registration at stated intervals and to pay a fee for such  
20 renewal on or before a specified date, or be subject to \*  
21 revocation of ~~his~~ the license or certificate or other penalties, \*  
22 who has since the enactment by the Congress of the United States  
23 of the Selective Service and Training Act of 1940 entered, or  
24 shall hereafter enter, the armed forces of the United States of  
25 America, or who has since the enactment of said act been  
26 engaged, or shall hereafter be engaged, in employment, outside  
27 of the United States, essential to the prosecution of the  
28 present war and to the national defense, whose license or  
29 certificate of registration was effective at the time ~~he~~-entered \*  
30 of entry into the armed forces or engaged engagement in the \*  
31 employment aforesaid, is hereby exempted from the payment of all  
32 renewal fees and from the filing of any application for renewal,  
33 which but for this act would have been required ~~of him~~ as a \*  
34 condition of the renewal of ~~his~~ the license or certificate, \*  
35 during the time ~~he~~ the person has been in such armed forces or \*  
36 in such employment, and from any penalties for nonpayment or  
37 late payment, and is hereby exempted from further payment of  
38 such renewal fees and from the making of any application for  
39 renewal during the period ~~he~~ the person shall remain in such \*  
40 armed forces or is engaged in such employment, and for a further  
41 period of six months from ~~his~~ discharge from the armed forces, \*  
42 if a member thereof, or from the date of ~~his~~ return within the \*  
43 boundaries of the United States if engaged in the employment \*  
44 hereinbefore referred to. ~~His~~ The license or certificate in the \*  
45 meantime shall remain in full force and effect, and if it has  
46 been cancelled or revoked since the date of the enactment of the  
47 Selective Service and Training Act of 1940 solely on the ground  
48 of nonpayment of renewal fees, or failure to apply for a  
49 renewal, it shall be reinstated upon the application of the  
50 licensee or registrant or any one on ~~his~~ the licensee's or \*  
51 registrant's behalf without the payment of any penalties or \*  
52 costs. Any such person may within six months from the date  
53 of ~~his~~ release from the armed forces of the United States, if ~~he~~ \*  
54 the person has been a member of such armed forces, or from the \*  
55 date of ~~his~~ return within the boundaries of the United States if \*  
56 ~~he~~ the person has been engaged in employment hereinbefore \*  
57 referred to, make application for a renewal of ~~his~~ the license \*  
58 or certificate without penalty and in the same manner as if ~~he~~ \*  
59 the person had made application therefor at the time or times \*  
60 specified by existing laws.

326\*#56S

61 326.56 LICENSES, CERTIFICATES OF REGISTRATION; RENEWALS.

62 No change for subd 1

63 Subd. 2. TRADE LICENSES OR REGISTRATIONS, RENEWALS;  
64 EXEMPTION OF MEMBERS OF ARMED FORCES. Any person required by  
65 law to be licensed or registered in order to carry on or  
66 practice a trade, employment, occupation or profession in the  
67 state of Minnesota who is also required by law to renew ~~his~~ the \*  
68 license or certificate of registration at stated intervals and  
69 to pay a fee for such renewal on or before a specified date, or  
70 be subject to revocation of ~~his~~ the license or certificate or \*  
71 other penalties, who has since the enactment by the Congress of  
72 the United States of the Selective Service and Training Act of  
73 1940 entered, or shall hereafter enter, the armed forces of the  
74 United States of America, or who has since the enactment of said

1 act been engaged, or shall hereafter be engaged, in employment,  
 2 outside of the United States, essential to the prosecution of  
 3 any war or to the national defense, whose license or certificate  
 4 of registration was effective at the time ~~he~~entered of entry \*  
 5 into the armed forces or engaged engagement in the employment \*  
 6 aforesaid, is hereby exempted from the payment of all renewal  
 7 fees and from the filing of any application for renewal, which  
 8 but for this section would have been required ~~of him~~ as a \*  
 9 condition of the renewal of ~~his~~ the license or certificate, \*  
 10 during the time ~~he~~ the person has been in such armed forces or \*  
 11 in such employment, and from any penalties for nonpayment or  
 12 late payment, and is hereby exempted from further payment of  
 13 such renewal fees and from the making of any application for  
 14 renewal during the period ~~he~~ the person shall remain in such \*  
 15 armed forces or is engaged in such employment, and for a further  
 16 period of six months from ~~his~~ discharge from the armed forces, \*  
 17 if a member thereof, or from the date of ~~his~~ return within the \*  
 18 boundaries of the United States if engaged in the employment \*  
 19 hereinbefore referred to. ~~His~~ The license or certificate in the \*  
 20 meantime shall remain in full force and effect, and if it has  
 21 been canceled or revoked since the date of the enactment of the  
 22 selective service and training act of 1940 solely on the ground  
 23 of nonpayment of renewal fees, or failure to apply for a  
 24 renewal, it shall be reinstated upon the application of the  
 25 licensee or registrant or any one on ~~his~~ the licensee's or \*  
 26 registrant's behalf without the payment of any penalties or \*  
 27 costs. Any such person may within six months from the date  
 28 of ~~his~~ release from the armed forces of the United States, if ~~he~~ \*  
 29 the person has been a member of such armed forces, or from the \*  
 30 date of ~~his~~ return within the boundaries of the United States if \*  
 31 ~~he~~ the person has been engaged in employment hereinbefore \*  
 32 referred to, make application for a renewal of ~~his~~ the license \*  
 33 or certificate without penalty and in the same manner as if ~~he~~ \*  
 34 the person had made application therefor at the time or time \*  
 35 specified by existing laws. \*

326\*#60S

36 326.60 WATER CONDITIONING CONTRACTORS AND INSTALLERS  
37 MUST BE LICENSED IN CERTAIN CITIES.

38 Subdivision 1. In any city or town now or hereafter having  
 39 a population of 5,000 or more according to the last federal  
 40 census, no person, firm, or corporation shall engage in or work  
 41 at the business of water conditioning installation or servicing  
 42 after January 1, 1970, unless (a) at all times a person licensed  
 43 as a water conditioning contractor by the state commissioner of  
 44 health shall be responsible for the proper water conditioning  
 45 installation and servicing work of such person, firm, or  
 46 corporation, and (b) all installations, other than exchanges of  
 47 portable equipment, are actually made by a licensed water  
 48 conditioning contractor or licensed water conditioning  
 49 installer. Anyone not so licensed may do water conditioning  
 50 work which complies with the provisions of the minimum standard  
 51 prescribed by the state commissioner of health on premises or  
 52 that part of premises owned and actually occupied by ~~him~~ the \*  
 53 worker as ~~his~~ a residence, unless otherwise forbidden to do so \*  
 54 by a local ordinance.

55 No change for subd 2 to 3

326\*#601S

56 326.601 ALTERNATIVE STATE BONDING AND INSURANCE  
57 REGULATION.

58 Subdivision 1. BONDS. An applicant for a water  
 59 conditioning contractor or installer license or renewal thereof  
 60 who is required by any political subdivision to give a bond to  
 61 obtain or maintain the license, may comply with any political  
 62 subdivision bonding requirement by giving a bond to the state in  
 63 the total penal sum of \$3,000 conditioned upon the faithful and  
 64 lawful performance of all water conditioning contracting or  
 65 installing work done ~~by him~~ within the state. The bond shall be \*  
 66 for the benefit of persons suffering injuries or damages due to  
 67 the work. The bond shall be filed with the commissioner of  
 68 health and shall be written by a corporate surety licensed to do  
 69 business in this state. No applicant for a water conditioning  
 70 contractor or installer license who maintains the bond under  
 71 this subdivision shall be otherwise required to meet the bond  
 72 requirements of any political subdivision.

73 No change for subd 2 to 4

326\*#66S



## 1 326.66 WATER CONDITIONING ADVISORY BOARD.

2 A water conditioning advisory board of nine members may be  
 3 appointed by the commissioner or ~~his~~ a designee to assist in the \*  
 4 establishment of rules, regulations, and standards for water  
 5 conditioning installation and servicing. This board shall  
 6 consist of at least three members who are actively engaged as  
 7 water conditioning contractors and the terms, removal, duties,  
 8 and powers of such board shall be in accordance with such rules  
 9 and regulations as the commissioner or ~~his~~ a designee may \*  
 10 prescribe.

## 327\*#10S

## 11 327.10 LODGING ESTABLISHMENT OPERATOR, DUTIES.

12 Every person operating within this state a recreational  
 13 camping area, cabin camp, lodging house, tourist rooms, motel,  
 14 manufactured home park, or resort furnishing sleeping or  
 15 overnight stopping accommodations for transient guests, shall  
 16 provide and keep thereat a suitable guest register for the  
 17 registration of all guests provided with sleeping accommodations  
 18 or other overnight stopping accommodations thereat; and every  
 19 such guest shall be registered therein. Upon the arrival of  
 20 every such guest, the operator of such camp or resort shall  
 21 require ~~him~~ the guest to enter in such register, or enter for \*  
 22 ~~him~~ the guest therein, in separate columns provided in such \*  
 23 register, the name and home address of the guest and every  
 24 person, if any, with ~~him~~ the guest as a member of ~~his~~ the party; \*  
 25 and if traveling by motor vehicle, the make of such vehicle,  
 26 registration number, and other identifying letters or characters  
 27 appearing on the official number plate carried thereon,  
 28 including the name of the state issuing such official plate.  
 29 Such registration shall be kept in an accurate and orderly  
 30 manner and retained for one year so that the same will be always  
 31 accessible for inspection by the proper authorities.

## 327\*#11S

## 32 327.11 GUEST, REGISTRATION.

33 Every person, upon arriving at any lodging house,  
 34 manufactured home park, recreational camping area, cabin camp,  
 35 motel or other resort described in sections 327.10 to 327.13 and  
 36 applying for guest accommodations therein of the character  
 37 described in section 327.10, shall furnish to the operator or  
 38 other attendant in charge of such camp or resort the  
 39 registration information necessary to complete ~~his~~ the \*  
 40 registration in accordance with the requirements of section  
 41 327.10, and shall not be provided with accommodations unless and  
 42 until such information shall be so furnished.

## 327\*#131S

## 43 327.131 FRAUD.

44 A person who (1) obtains food, lodging, or other  
 45 accommodations at a recreational camping area without paying for  
 46 it, and with intent to defraud the owner or manager of the  
 47 recreational camping area or (2) obtains credit at a  
 48 recreational camping area by or through any false pretense, or  
 49 by or through the aid, assistance, or influence of any baggage  
 50 or effects in ~~his~~ the possession and control of, but not \*  
 51 actually belonging to ~~him~~, the person shall be guilty of a \*  
 52 misdemeanor.

## 327\*#16S

## 53 327.16 APPLICATION.

54 No change for subd 1 to 5

55 Subd. 6. DENIAL OF CONSTRUCTION. If the application  
 56 to construct or make alterations upon a manufactured home park  
 57 or recreational camping area and the appurtenances thereto or a  
 58 primary license to operate and maintain the same is denied by  
 59 the state commissioner of health, ~~he~~ the commissioner shall so \*  
 60 state in writing giving the reason or reasons for denying the  
 61 application. If the objections can be corrected the applicant  
 62 may amend ~~his~~ the application and resubmit it for approval, and \*  
 63 if denied the applicant may appeal from the decision of the  
 64 state commissioner of health as provided in section 327.18.

## 327\*#18S

## 65 327.18 LICENSES; REVOCATION, SUSPENSION.

66 Subdivision 1. PROCEDURE FOR REVOCATION OR SUSPENSION.

67 Any license granted hereunder shall be subject to revocation  
 68 or suspension by the state department of health; provided,  
 69 however, that the state department of health shall first serve  
 70 or cause to be served upon the licensee a written notice  
 71 specifying the way or ways in which such licensee has failed to

1 comply with this statute, or any special rules or regulations  
 2 promulgated by the state department of health. Said notice  
 3 shall direct the licensee to remove or abate such nuisance,  
 4 insanitary or objectionable condition, specified in such notice,  
 5 within five days, or within such extended period of time as may  
 6 be reasonably allowed by the complaining official. If the  
 7 licensee fails to comply with the terms and conditions of said  
 8 notice, within the time specified or such extended period of  
 9 time, the department of health shall require the licensee to  
 10 appear for a hearing before the state commissioner of health or  
 11 the duly authorized employees of the department of health. The  
 12 state commissioner of health shall review the facts and make  
 13 such determination as ~~he~~ the commissioner deems necessary in the \*  
 14 matter. If the licensee fails to comply with such  
 15 determination, the commissioner shall direct the department of  
 16 health to suspend or revoke the license.

17 No change for subd 2 to 3

327\*#25S

18 327.25 OPERATION, PART OF YEAR.

19 If any applicant for a manufactured home park license  
 20 desires to operate such manufactured home park only during the  
 21 months from May 1 to October 1, ~~he~~ the applicant shall pay the \*  
 22 above mentioned annual license fee. If in the opinion of the  
 23 state department of health the sanitary and facility  
 24 requirements herein contained are too rigid for the seasonal  
 25 manufactured home parks, the department may in writing or by  
 26 regulation modify such requirements as circumstances may permit  
 27 and require.

327\*#33S

28 327.33 ADMINISTRATION.

29 Subdivision 1. INSPECTIONS. The commissioner shall,  
 30 through ~~his-own~~ the department's inspectors or through a \*  
 31 designated recognized inspection service acting as ~~his~~ \*  
 32 authorized representative of the commissioner perform sufficient \*  
 33 inspections of manufacturing premises and manufactured homes to  
 34 insure compliance with sections 327.31 to 327.34 and Laws 1981,  
 35 Chapter 365, Section 5. The commissioner shall have the  
 36 exclusive right to conduct inspections, except for the  
 37 inspections conducted or authorized by the secretary.

38 No change for subd 2 to 5

39 Subd. 6. AUTHORIZATION AS AGENCY. The commissioner  
 40 shall apply to the secretary for approval of the commissioner as  
 41 the administrative agency for the regulation of manufactured  
 42 homes under the rules of the secretary. The commissioner may \*  
 43 make rules for the administration and enforcement of ~~his~~ \*  
 44 department responsibilities as a state administrative agency \*  
 45 including, but not limited to, rules for the handling of  
 46 citizen's complaints. All moneys received for services provided  
 47 by the commissioner or ~~his~~ the department's authorized agents as \*  
 48 a state administrative agency shall be deposited in the general  
 49 fund. The commissioner is charged with the adoption,  
 50 administration, and enforcement of the Manufactured Home  
 51 Construction and Safety Standards, consistent with rules and  
 52 regulations promulgated by the U.S. Department of Housing and  
 53 Urban Development. The commissioner may adopt the rules,  
 54 regulations, codes, and standards necessary to enforce the  
 55 standards promulgated under this section. The commissioner is  
 56 authorized to conduct hearings and presentations of views  
 57 consistent with regulations adopted by the U.S. Department of  
 58 Housing and Urban Development and to adopt rules and regulations  
 59 in order to carry out this function.

60 Subd. 7. EMPLOYEES. The commissioner may appoint \*  
 61 such employees within the department of administration as ~~he-may~~ \*  
 62 deem deemed necessary for the administration of sections 327.31 \*  
 63 to 327.34, Laws 1981, Chapter 365, Section 5, and sections  
 64 327.51 to 327.55.

327\*#34S

65 327.34 PENALTIES.

66 Subdivision 1. GENERALLY. It shall be a misdemeanor  
 67 for any person,

68 (a) to sell, lease, or offer to sell or lease, any  
 69 manufactured home manufactured after July 1, 1972 which does not  
 70 comply with the manufactured home building code or which does  
 71 not bear a seal or label as required by sections 327.31 to  
 72 327.34, unless the action is subject to the provisions of Laws  
 73 1981, Chapter 365, Section 5;

1 (b) to affix a seal or label, or cause a seal or label to  
 2 be affixed, to any manufactured home which does not comply with  
 3 the manufactured home building code unless the action is subject  
 4 to the provisions of Laws 1981, Chapter 365, Section 5;

5 (c) to alter a manufactured home manufactured after July 1,  
 6 1972, in a manner prohibited by sections 327.31 to 327.34;

7 (d) to fail to correct a manufactured home building code  
 8 violation in a manufactured home manufactured after July 1,  
 9 1972, which is owned, manufactured, or sold by ~~him~~ that person,  
 10 within 40 days of being ordered to do so in writing by an  
 11 authorized representative of the commissioner, unless the  
 12 correction is subject to the provisions of Laws 1981, Chapter  
 13 365, Section 5; or

14 (e) to interfere with, obstruct, or hinder any authorized  
 15 representative of the commissioner in the performance of ~~his~~  
 16 duties relating to manufactured homes manufactured after July 1,  
 17 1972, and prior to June 15, 1976.

18 Subd. 2. Repealed, 1981 c 365 s 11

19 No change for subd 3 to 4

327\*#35S

20 327.35 VIOLATIONS; MANUFACTURED HOMES MANUFACTURED AFTER  
 21 JUNE 14, 1976.

22 No change for subd 1 to 2

23 Subd. 3. GENERAL PROHIBITION. No person shall  
 24 manufacture for sale, lease, sell, offer for sale or lease, or  
 25 introduce or deliver into the state of Minnesota any  
 26 manufactured home manufactured after June 14, 1976, which does  
 27 not comply with the manufactured home construction and safety  
 28 standards promulgated by the secretary. This subdivision does  
 29 not apply:

30 (a) To any sale or offer for sale made after the first  
 31 purchase of a manufactured home in good faith for purposes other  
 32 than resale;

33 (b) To any person who establishes that ~~he did not have~~  
 34 there was no reason to know in the exercise of due care that a  
 35 manufactured home is not in conformity with applicable federal  
 36 manufactured home construction and safety standards;

37 (c) To any person, who prior to first purchase, holds a  
 38 certificate issued by the manufacturer or importer of the  
 39 manufactured home certifying that the manufactured home conforms  
 40 to all applicable federal manufactured home construction and  
 41 safety standards, unless the person knows that the manufactured  
 42 home does not conform; or

43 (d) To any manufactured home intended solely for export,  
 44 and so labeled or tagged on the manufactured home itself and on  
 45 the outside of the container, if any, in which it is to be  
 46 exported.

47 Subd. 4. ACCESS FOR INFORMATION GATHERING. No person  
 48 shall fail or refuse to permit the commissioner or ~~his~~ an  
 49 authorized agent access at any reasonable time to or the copying  
 50 of records, or fail to make reports available or provide  
 51 information, or fail or refuse to permit reasonable entry or  
 52 inspection at any reasonable time of any manufactured home  
 53 manufactured after June 14, 1976 or reasonable inspection of any  
 54 related records pertaining to the manufactured home.

55 No change for subd 5 to 7

327\*#71S

56 327.71 INNKEEPER LIABILITY FOR THE PERSONAL PROPERTY OF  
 57 GUESTS.

58 Subdivision 1. VALUABLES. No innkeeper who has in  
 59 ~~his~~ the establishment a fireproof, metal safe or vault, in good  
 60 order and fit for the custody of valuables, and who keeps a copy  
 61 of this subdivision clearly and conspicuously posted at or near  
 62 the front desk and on the inside of the entrance door of every  
 63 bedroom, shall be liable for the loss of or injury to the  
 64 valuables of a guest unless: (1) the guest has offered to  
 65 deliver the valuables to the innkeeper for custody in the safe  
 66 or vault; and (2) the innkeeper has omitted or refused to take  
 67 the valuables and deposit them in the safe or vault for custody  
 68 and to give the guest a receipt for them. Except as otherwise  
 69 provided in subdivision 6, the liability of an innkeeper for the  
 70 loss of or injury to the valuables of a guest shall not exceed  
 71 \$1,000. No innkeeper shall be required to accept valuables for  
 72 custody in the safe or vault if their value exceeds \$1,000,  
 73 unless the acceptance is in writing.

74 Subd. 2. PROPERTY IN BAGGAGE ROOM. No innkeeper

1 shall be liable for the loss of or damage to baggage, parcels,  
2 packages or wearing material of a guest that has been delivered  
3 to the innkeeper for custody elsewhere than in the room assigned  
4 to the guest, or in the hotel safe or vault, unless the  
5 innkeeper has given the guest a check or receipt in writing  
6 evidencing the delivery. Except as otherwise provided in  
7 subdivision 6, the liability of an innkeeper for the loss of or  
8 damage to property delivered to ~~him~~ the innkeeper for custody \*  
9 under this subdivision shall not exceed \$1,000.

10 No change for subd 3 to 4

11 Subd. 5. ABANDONED PROPERTY. Except as otherwise  
12 provided in subdivision 6, no innkeeper shall be liable for the  
13 loss of or damage to valuables or personal property of a guest  
14 that the guest has allowed to remain in the hotel after the  
15 relationship of innkeeper and guest has ceased, or that the  
16 guest has forwarded to the hotel before the relationship of  
17 innkeeper and guest has begun. If the valuables or personal  
18 property remain at the hotel for a period of at least ten days  
19 without having been claimed by the owner, the innkeeper has the  
20 right to deposit them in a storage warehouse, and to take a  
21 warehouse receipt in the name of the owner. An innkeeper who  
22 deposits valuables or personal property of a guest in a storage  
23 warehouse shall hold the warehouse receipt for the owner, and  
24 deliver it to ~~him~~ the owner upon demand and upon payment of the \*  
25 costs of storage. The innkeeper may also dispose of abandoned,  
26 unclaimed property in the manner provided in sections 345.01 to  
27 345.07.

28 Subd. 6. FAULT OR NEGLIGENCE OF INNKEEPER. An  
29 innkeeper who, intentionally or negligently, causes the loss of  
30 or damage to valuables or property delivered ~~to him~~ for custody \*  
31 as provided in subdivisions 1 and 2, to property contained in  
32 the assigned room of a guest as provided in subdivision 4, or to  
33 abandoned valuables or property not delivered to a storage  
34 warehouse provided in subdivision 5, shall be liable to the  
35 guest for either the actual value of the valuables or the  
36 property, or the amount of the actual injury to the valuables or  
37 the property.

327\*#75S

38 327.75 FRAUD; PROOF OF FRAUD.

39 No change for subd 1

40 Subd. 2. PROOF OF FRAUD. Prima facie evidence of the  
41 fraudulent ~~act~~ referred to in subdivision 1 includes:

42 (a) proof that the person obtained the services or credit  
43 for the services by false pretense, or by false or fictitious  
44 show or pretense of baggage or other property;

45 (b) proof that the person refused or neglected to pay for  
46 the services upon demand;

47 (c) proof that the person gave in payment of the services  
48 negotiable paper on which payment was refused;

49 (d) proof that the person absconded without offering to pay  
50 for the services; or

51 (e) proof that the person surreptitiously removed or  
52 attempted to remove ~~his~~ baggage owned by that person. \*

327\*#76S

53 327.76 INNKEEPER'S LIEN.

54 Subdivision 1. LIEN CREATED. An innkeeper shall have  
55 a lien upon the valuables, baggage or other property of a guest  
56 brought into ~~his~~ the innkeeper's hotel, for the proper charges \*  
57 due ~~to him~~ on account of the guest's accommodation, board, room \*  
58 and lodging, for all money paid out for or advanced to the  
59 guest, for extras furnished to the guest at the guest's written  
60 request, and for the costs of enforcing the lien. The  
61 innkeeper's lien right is in addition to the innkeeper's right  
62 to recover payment from the guest under other legal or equitable  
63 theories or causes of action. However, possession of the  
64 valuables, baggage or other property subject to the lien may be  
65 taken, and the lien enforced, only in the manner provided in  
66 subdivisions 2 and 3.

67 Subd. 2. POSSESSION PRIOR TO FINAL JUDGMENT. The  
68 lien created in subdivision 1 may be enforced only after final  
69 judgment in an action brought to recover the charges and  
70 moneys. During the pendency of the proceeding, the plaintiff  
71 may take possession of the valuables, baggage or other property  
72 upon an order issued by the court, if it appears to the court  
73 from an affidavit filed by or on behalf of the plaintiff that  
74 the valuables, baggage or other property is about to be

1 destroyed, substantially devalued or removed from the premises.  
 2 Ten days written notice of the hearing on the motion for the  
 3 order shall be served on the defendant and shall inform the  
 4 defendant that ~~he-or-she-may-file~~ affidavits may be filed and  
 5 present testimony presented on his-or-her behalf of the  
 6 defendant, and that if ~~he-or-she~~ the defendant fails to appear  
 7 the plaintiff will apply to the court for the order. The  
 8 plaintiff shall file a bond approved by the court conditioned  
 9 for the return of the property to the defendant, if a return be  
 10 adjudged, and for the payment to defendant of any sum adjudged  
 11 against the plaintiff. The bond shall be in the amount fixed by  
 12 the court. Upon an order issued by the court, the plaintiff  
 13 shall have the right to take possession of the valuables,  
 14 baggage or other property pending final judgment in the  
 15 plaintiff's action to recover charges or moneys owed.

\*  
\*  
\*

16 No change for subd 3

327A#01S

17 327A.01 DEFINITIONS.

18 No change for subd 1 to 9

19 Subd. 10. "Home improvement contractor" means a person who  
 20 is engaged in the business of home improvement either full-time  
 21 or part-time, and who holds ~~himself-or-herself~~ out to the public  
 22 as having knowledge or skill peculiar to the business of home  
 23 improvement.

\*

24 No change for subd 11

327A#03S

25 327A.03 EXCLUSIONS.

26 The liability of the vendor or the home improvement  
 27 contractor under sections 327A.01 to 327A.07 is limited to the  
 28 specific items set forth in sections 327A.01 to 327A.07 and does  
 29 not extend to the following:

30 (a) Loss or damage not reported by the vendee or the owner  
 31 to the vendor or the home improvement contractor in writing  
 32 within six months after the vendee or the owner discovers or  
 33 should have discovered the loss or damage;

34 (b) Loss or damage caused by defects in design,  
 35 installation, or materials which the vendee or the owner  
 36 supplied, installed, or ~~had~~ directed to be installed under-his  
 37 direction;

\*  
\*

38 (c) Secondary loss or damage such as personal injury or  
 39 property damage;

40 (d) Loss or damage from normal wear and tear;

41 (e) Loss or damage from normal shrinkage caused by drying  
 42 of the dwelling or the home improvement within tolerances of  
 43 building standards;

44 (f) Loss or damage from dampness and condensation due to  
 45 insufficient ventilation after occupancy;

46 (g) Loss or damage from negligence, improper maintenance or  
 47 alteration of the dwelling or the home improvement by parties  
 48 other than the vendor or the home improvement contractor;

49 (h) Loss or damage from changes in grading of the ground  
 50 around the dwelling or the home improvement by parties other  
 51 than the vendor or the home improvement contractor;

52 (i) Landscaping or insect loss or damage;

53 (j) Loss or damage from failure to maintain the dwelling or  
 54 the home improvement in good repair;

55 (k) Loss or damage which the vendee or the owner, whenever  
 56 feasible, has not taken timely action to minimize;

57 (l) Loss or damage which occurs after the dwelling or the  
 58 home improvement is no longer used primarily as a residence;

59 (m) Accidental loss or damage usually described as acts of  
 60 God, including, but not limited to: fire, explosion, smoke,  
 61 water escape, windstorm, hail or lightning, falling trees,  
 62 aircraft and vehicles, flood, and earthquake, except when the  
 63 loss or damage is caused by failure to comply with building  
 64 standards;

65 (n) Loss or damage from soil movement which is compensated  
 66 by legislation or covered by insurance;

67 (o) Loss or damage due to soil conditions where  
 68 construction is done upon lands owned by the vendee or the owner  
 69 and obtained by ~~him~~ the vendee or owner from a source  
 70 independent of the vendor or the home improvement contractor;

\*

71 (p) In the case of home improvement work, loss or damage  
 72 due to defects in the existing structure and systems not caused  
 73 by the home improvement.

327B#01S

## 1 327B.01 DEFINITIONS.

2 No change for subd 1 to 2

3 Subd. 3. BROKER. "Broker" means any person who:

4 (a) For another and for commission, fee or other valuable  
5 consideration or with the intention or expectation of receiving  
6 the same directly or indirectly lists, sells, exchanges, buys or  
7 rents, manages, or offers or attempts to negotiate a sale,  
8 option, exchange, purchase or rental of an interest in a  
9 manufactured home or advertises or holds ~~himself-or-itself~~ out \*  
10 as engaged in such activities;

11 (b) For another and for commission, fee or other valuable  
12 consideration or with the intention or expectation of receiving  
13 the same directly or indirectly negotiates or offers or attempts  
14 to negotiate a loan, secured or to be secured by a security  
15 interest in or other encumbrance on a manufactured home; or

16 (c) Engages in the business of charging an advance fee or  
17 contracting for collection of a fee in connection with any  
18 contract ~~whereby-he-undertakes~~ to undertake to promote the sale \*  
19 of a manufactured home through its listing in a publication  
20 issued primarily for the purpose of promoting the sale of  
21 manufactured homes or real estate.

22 No change for subd 4 to 5

23 Subd. 6. CONTROLLING SHAREHOLDER. "Controlling  
24 shareholder" means a shareholder whose legal, equitable and  
25 beneficial holdings, and whose family's such holdings, in a \*  
26 dealership ~~7-and-those-of-his-family7~~ amount to more than ten \*  
27 percent of the outstanding shares.

28 No change for subd 7 to 17

29 Subd. 18. SALE. "Sale" means:

30 (a) The passing of title from one person to another for  
31 consideration; or

32 (b) Any agreement to sell under which possession is  
33 delivered to the buyer but title is retained in the seller; or

34 (c) Any agreement in the form of a bailment or lease of  
35 goods if the bailee or lessee agrees to pay as compensation for  
36 use a sum substantially equivalent to or in excess of the  
37 aggregate value of the goods involved and it is agreed that the  
38 bailee or lessee will become, or for no other than a nominal  
39 consideration has the option to become, the owner of the goods  
40 upon full compliance with ~~his~~ the bailee's or lessee's \*  
41 obligations under the agreement; or

42 (d) Any legally binding executory agreement to make a sale.

43 No change for subd 19 to 21

## 327B#04S

## 44 327B.04 MANUFACTURERS AND DEALERS; LICENSES; BONDS.

45 No change for subd 1 to 3

46 Subd. 4. LICENSE PREREQUISITES. No application shall  
47 be granted nor license issued until the applicant proves to the  
48 commissioner that:

49 (a) the applicant has a permanent, established place of  
50 business at each licensed location. An "established place of  
51 business" means a permanent enclosed building other than a  
52 residence, or a commercial office space, either owned by the  
53 applicant or leased by the applicant for a term of at least one  
54 year, located in an area where zoning regulations allow  
55 commercial activity, and where the books, records and files  
56 necessary to conduct the business are kept and maintained. The  
57 owner of a licensed manufactured home park who resides in or  
58 adjacent to the park may use ~~his~~ the residence as the \*  
59 established place of business required by this subdivision,  
60 unless prohibited by local zoning ordinance.

61 If a license is granted, the licensee may use unimproved  
62 lots and premises for sale, storage, and display of manufactured  
63 homes, if the licensee first notifies the commissioner in  
64 writing;

65 (b) if the applicant desires to sell, solicit or advertise  
66 the sale of new manufactured homes, it has a bona fide contract  
67 or franchise in effect with a manufacturer or distributor of the  
68 new manufactured home it proposes to deal in;

69 (c) the applicant has secured a surety bond in the amount  
70 of \$20,000 for the protection of consumer customers, executed by  
71 the applicant as principal and issued by a surety company  
72 admitted to do business in this state. The bond shall be  
73 exclusively for the purpose of reimbursing consumer customers  
74 and shall be conditioned upon the faithful compliance by the  
75 applicant with all of the laws and rules of this state

1 pertaining to the applicant's business as a dealer or  
2 manufacturer, including sections 325D.44, 325F.67 and 325F.69,  
3 and upon the applicant's faithful performance of all its legal  
4 obligations to consumer customers;

5 (d) the applicant has established a trust account as  
6 required by section 327B.08, subdivision 3, unless the applicant  
7 states in writing its intention to limit its business to  
8 selling, offering for sale, soliciting or advertising the sale  
9 of new manufactured homes; and

10 (e) the applicant has provided evidence of having had at  
11 least two years' prior experience in the sale of manufactured  
12 homes, working for a licensed dealer.

13 Subd. 5. EXEMPTION FOR REAL ESTATE BROKERS AND  
14 SUBSPERSONS SALESPEOPLE. Any person licensed as a real  
15 estate broker or salesperson under chapter 82 who brokers the  
16 sale of used manufactured homes is not required to obtain a  
17 license or a bond as required by this section, but is subject to  
18 all other provisions of sections 327B.01 to 327B.12. Any real  
19 estate broker or salesperson who violates a provision of  
20 sections 327B.06 to 327B.09 in selling or offering for sale a  
21 used manufactured home shall be deemed to have violated a  
22 provision of chapter 82.

23 No change for subd 6 to 7

327B#05S

24 327B.05 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.

25 Subdivision 1. GROUNDS. The commissioner may by  
26 order deny, suspend or revoke any license ~~if he finds on~~  
27 finding (1) that the order is in the public interest and (2)  
28 that the applicant or licensee or any of its directors,  
29 officers, limited or general partners, controlling shareholders  
30 or affiliates:

31 (a) has filed an application for a license or a license  
32 renewal which fails to disclose any material information or  
33 contains any statement which is false or misleading with respect  
34 to any material fact;

35 (b) has violated any of the provisions of sections 327B.01  
36 to 327B.12 or any rule or order issued by the commissioner or  
37 any prior law providing for the licensing of manufactured home  
38 dealers or manufacturers;

39 (c) has had a previous manufacturer or dealer license  
40 revoked in this or any other state;

41 (d) has engaged in acts or omissions which have been  
42 adjudicated or amount to a violation of any of the provisions of  
43 section 325D.44, 325F.67 or 325F.69;

44 (e) has sold or brokered the sale of a home containing a  
45 material violation of sections 327.31 to 327.35 about which the  
46 dealer knew or which should have been obvious to a reasonably  
47 prudent dealer;

48 (f) has failed to make or provide ~~to the commissioner~~  
49 listings, notices and reports required by ~~him~~ the commissioner;

50 (g) has failed to pay a civil penalty assessed under  
51 subdivision 5 within ten days after the assessment becomes final;

52 (h) has failed to pay to the commissioner or other  
53 responsible government agency all taxes, fees and arrearages due;

54 (i) has failed to duly apply for license renewal;

55 (j) has violated any applicable manufactured home building  
56 or safety code;

57 (k) has failed or refused to honor any express or implied  
58 warranty as provided in section 327B.03;

59 (l) has failed to continuously occupy a permanent,  
60 established place of business licensed under section 327B.04;

61 (m) has, without first notifying the commissioner, sold a  
62 new and unused manufactured home other than the make of  
63 manufactured home described in a franchise or contract filed  
64 with the application for license or license renewal;

65 (n) has wrongfully failed to deliver a certificate of title  
66 to a person entitled to it;

67 (o) is insolvent or bankrupt;

68 (p) holds an impaired or canceled bond;

69 (q) has failed to notify the commissioner of bankruptcy  
70 proceedings within ten days after a petition in bankruptcy has  
71 been filed by or against the dealer or manufacturer;

72 (r) has, within the previous ten years, been convicted of a  
73 crime that either related directly to the business of the dealer  
74 or manufacturer or involved fraud, misrepresentation or misuse  
75 of funds;

1 (s) has suffered a judgment within the previous five years  
2 in a civil action involving fraud, misrepresentation or misuse  
3 of funds; or

4 (t) has failed to reasonably supervise any employee or  
5 agent of the dealer or manufacturer, resulting in injury or harm  
6 to the public.

7 The commissioner may establish rules pursuant to section  
8 327B.10 further specifying, defining or establishing standards  
9 of conduct for manufactured home dealers and manufacturers.

10 Subd. 2. DENIAL; APPEAL; RECONSIDERATION. ~~If the~~ \*  
11 ~~commissioner denies an application for a license, he~~ \*  
12 commissioner shall inform the applicant and summarize in writing \*  
13 the reasons for ~~the a~~ denial. Within 15 days of receiving the \*  
14 commissioner's notice, the applicant may request in writing that  
15 the commissioner reconsider. The request for reconsideration  
16 shall explain why the commissioner's previous decision was wrong  
17 and shall specifically address each reason given by the  
18 commissioner for the denial. Within 20 days of receiving the  
19 request for reconsideration, the commissioner shall decide  
20 whether to withdraw the denial and grant a license. If the  
21 commissioner reaffirms the denial, the applicant may appeal in  
22 accordance with chapter 14. An applicant whose application is  
23 denied may also cure the defects in the application cited by the  
24 commissioner and resubmit the application at no extra charge.

25 Subd. 3. LICENSE SUSPENSION OR REVOCATION; HEARING.  
26 Upon the commissioner, upon his own commissioner's motion or \*  
27 upon the complaint of another, the commissioner may prepare and \*  
28 serve upon a licensee a written notice or complaint summarizing  
29 the violations charged, and requiring the licensee to appear at  
30 a specified time and place to show cause why the license should  
31 not be revoked. The hearing on the suspension or revocation  
32 shall be conducted pursuant to the contested case provisions of  
33 the administrative procedure act. Upon the completion of the  
34 hearing, if the commissioner finds the existence of any of the  
35 causes for suspension or revocation set forth in subdivision 1  
36 and determines that the license should be revoked or  
37 suspended, ~~he~~ the commissioner shall make a written order of \*  
38 revocation or suspension. A copy of the order shall be served  
39 upon the licensee in the manner provided by law for the service  
40 of summons in a civil action.

41 If the commissioner revokes or suspends the license of any  
42 person holding more than one license under the provisions of  
43 section 327B.04, subdivision 2, ~~he~~ the commissioner shall revoke \*  
44 or suspend all of the licenses of that person and of the  
45 affiliates of that person.

46 No change for subd 4 to 6

327B#08S

47 327B.08 DUTIES.

48 No change for subd 1 to 3

49 Subd. 4. SEGREGATION OF FUNDS. A dealer shall  
50 deposit all trust funds received in a trust account. A dealer  
51 shall not commingle personal funds or other funds with the funds  
52 in a trust account, except that a dealer may deposit and  
53 maintain a sum from ~~his~~ personal funds not to exceed \$100 in a \*  
54 trust account, which sum shall be specifically identified and  
55 used to pay service charges relating to the trust account.

56 No change for subd 5

327B#09S

57 327B.09 PROHIBITIONS.

58 Subdivision 1. LICENSE REQUIRED. No person shall  
59 engage in the business, either exclusively or in addition to any  
60 other occupation of manufacturing, selling, offering to sell,  
61 soliciting or advertising the sale of manufactured homes, or act  
62 as a broker without being licensed as a manufacturer or a dealer  
63 as provided in section 327B.04. Any person who manufactures,  
64 sells, offers to sell, solicits or advertises the sale of  
65 manufactured homes, or acts as a broker in violation of this  
66 subdivision shall nevertheless be subject to the duties,  
67 prohibitions and penalties imposed by sections 327B.01 to  
68 327B.12. This subdivision does not prohibit an individual from  
69 reselling, without a license, a manufactured home which is or  
70 has been ~~his or her~~ the individual's residence. \*

71 No change for subd 2 to 5

327B#11S

72 327B.11 RECOURSE TO THE BOND.

73 No change for subd 1



1 Subd. 2. PAYMENT OF CLAIMS; NOTICE TO COMMISSIONER.

2 Before paying any claim against a surety bond, the surety  
3 company must first notify the commissioner in writing of the  
4 amount of the claim, the basis of the claim and the surety  
5 company's intention to pay the claim. Unless the commissioner  
6 objects in writing within ten days of receiving the notice, the  
7 surety company may proceed upon its intention. The  
8 commissioner's failure to object is not evidence of the validity  
9 of the claim or of the propriety of paying the claim. The  
10 commissioner shall object only ~~if he has~~ with reasonable grounds \*  
11 to believe that paying the claim will reduce the obligation of  
12 the bond to an amount less than the total amount of other  
13 outstanding and valid claims against the bond.

14 No change for subd 3

327C#01S

15 327C.01 DEFINITIONS.

16 No change for subd 1 to 7

17 Subd. 8. REASONABLE RULE. "Reasonable rule" means a  
18 park rule:

19 (a) which is designed to promote the convenience, safety,  
20 or welfare of the residents, promote the good appearance and  
21 facilitate the efficient operation of the park, protect and  
22 preserve the park premises, or make a fair distribution of  
23 services and facilities;

24 (b) which is reasonably related to the purpose for which it  
25 is adopted;

26 (c) which is not retaliatory or unjustifiably  
27 discriminatory in nature; and

28 (d) which is sufficiently explicit in prohibition,  
29 direction, or limitation of ~~the resident's~~ conduct to fairly \*  
30 inform him the resident of what ~~he must~~ to do or must not to \*  
31 do to comply.

32 Subd. 9. RESIDENT. "Resident" means an owner of a  
33 manufactured home who rents a lot in a manufactured home park  
34 and includes the members of ~~his~~ the resident's household. \*

35 No change for subd 10 to 12

327C#02S

36 327C.02 RENTAL AGREEMENTS.

37 No change for subd 1 to 4

38 Subd. 5. WRITTEN NOTICE REQUIRED. A prospective \*  
39 resident, before being asked to sign a rental agreement, must be \*  
40 given the following notice printed verbatim in boldface type of \*  
41 a minimum size of ten points ~~must be given to a prospective~~ \*  
42 ~~resident before he or she is asked to sign a rental agreement.~~ \*  
43 The notice and the safety feature disclosure form required under  
44 section 327C.07, subdivision 3a, must be posted in a conspicuous  
45 and public location in the park:

46 "IMPORTANT NOTICE

47 State law provides special rules for the owners and  
48 residents of manufactured home parks.

49 You may keep your home in the park as long as the park is  
50 in operation and you meet your financial obligations, obey state  
51 and local laws which apply to the park, obey reasonable park  
52 rules, do not substantially annoy or endanger the other  
53 residents or substantially endanger park personnel and do not  
54 substantially damage the park premises. You may not be evicted  
55 or have your rent increased or your services cut for complaining  
56 to the park owner or to a governmental official.

57 If you receive an eviction notice and do not leave the  
58 park, the park owner may take you to court. If you lose in  
59 court a sheriff may remove you and your home from the park  
60 within seven days. Or, the court may require you to leave the  
61 park within seven days but give you 60 days to sell the home  
62 within the park.

63 All park rules and policies must be reasonable. Your rent  
64 may not be increased more than twice a year. Changes made in  
65 park rules after you become a park resident will not apply to  
66 you if they substantially change your original agreement.

67 The park may not charge you an entrance fee.

68 The park may require a security deposit, but the deposit  
69 must not amount to more than two months rent.

70 You have a right to sell the home in the park. But the  
71 sale is not final until the park owner approves the buyer as a  
72 new resident, and you must advise in writing anyone who wants to  
73 buy your home that the sale is subject to final approval by the  
74 park owner. You must also disclose in writing certain safety

1 information about your home to anyone who wants to buy it in the  
2 park. You must give this information to the buyer before the  
3 sale, in writing, on the form that is attached to this notice.  
4 You must completely and accurately fill out the form and you and  
5 the buyer should each keep a copy.

6 Your rental agreement and the park rules contain important  
7 information about your rights and duties. Read them carefully  
8 and keep a copy.

9 For further information concerning your rights, consult a  
10 private attorney. The state law governing the rental of lots in  
11 manufactured home parks may also be enforced by the Minnesota  
12 Attorney General."

13 In addition, the safety feature disclosure form required  
14 under section 327C.07, subdivision 3a, must be attached to the  
15 notice.

## 327C#03S

16 327C.03 FEES.

17 No change for subd 1 to 2

18 Subd. 3. RENT. All periodic rental payments charged  
19 to residents by the park owner shall be uniform throughout the  
20 park, except that a higher rent may be charged to a particular  
21 resident due to the larger size or location of the lot, or the  
22 special services or facilities furnished ~~to him~~ by the park. A \*  
23 park owner may charge a reasonable fee for delinquent rent where  
24 the fee is provided for in the rental agreement. The fee shall  
25 be enforceable as part of the rent owed by the resident. No  
26 park owner shall charge to a resident any fee, whether as part  
27 of or in addition to the periodic rental payment, which is based  
28 on the number of persons residing or staying in the resident's  
29 home, the number or age of children residing or staying in the  
30 home, the number of guests staying in the home, the size of the  
31 home, the fact that the home is temporarily vacant or the type  
32 of personal property used or located in the home. The park  
33 owner may charge an additional fee for pets owned by the  
34 resident, but the fee may not exceed \$4 per pet per month. This  
35 subdivision does not prohibit a park owner from abating all or a  
36 portion of the rent of a particular resident with special needs.

37 No change for subd 4 to 5

## 327C#05S

38 327C.05 RULES.

39 No change for subd 1

40 Subd. 2. PRESUMPTIVELY UNREASONABLE RULES. In any  
41 action in which the reasonableness of a rule is challenged, any  
42 rule which violates any provision of Laws 1982, Chapter 526,  
43 Article 2 or of any other law shall be deemed unreasonable, and  
44 the following rules shall be presumed unreasonable unless the  
45 park owner proves their reasonableness by clear and convincing  
46 evidence:

47 (a) any rule which prohibits ~~a resident from~~ the placing of  
48 a "for sale" sign on ~~his~~ a resident's home by the resident; \*

49 (b) any rule which requires a resident or prospective  
50 resident to purchase any particular goods or services from a  
51 particular vendor or vendors, including the park owner;

52 (c) any rule which requires a resident to use the services  
53 of a particular dealer or broker in an in park sale; and

54 (d) any rule requiring that more than one occupant of a  
55 home have an ownership interest in that home.

56 No change for subd 3 to 4

## 327C#07S

57 327C.07 IN PARK SALES.

58 Subdivision 1. RESIDENT'S RIGHTS. Except as  
59 otherwise provided in this section, a resident has the right to  
60 sell ~~his~~ a home through an in park sale. The park owner may not \*  
61 charge a fee for allowing the resident to exercise this right,  
62 except to charge a fee of up to \$25 for processing a prospective  
63 buyer's tenancy application. If the park owner is licensed as a  
64 dealer, the park owner may agree in writing to broker the in  
65 park sale of a resident's home. The park owner may not require  
66 a resident to use the park owner's services as a broker. The  
67 park owner may not give preferential treatment to applications  
68 for tenancy from people seeking to buy homes whose in park sale  
69 is being brokered by the park owner.

70 No change for subd 2 to 8

## 327C#11S

71 327C.11 EVICTION PROCEEDINGS.

72 Subdivision 1. RIGHT OF REDEMPTION. The right of

1 redemption, as expressed in section 504.02 and the common law,  
 2 is available to a resident from whom a park owner seeks to  
 3 recover possession for nonpayment of rent, but no resident may  
 4 exercise that right more than twice in any 12 month period;  
 5 provided, that a resident may exercise the right of redemption  
 6 more than twice in any 12 month period ~~if he pays~~ by paying the  
 7 park owner's actual reasonable attorney's fees as part of each  
 8 additional exercise of that right during the 12 month period.

9 No change for subd 2

10 Subd. 3. WRIT OF RESTITUTION STAYED. The issuance of  
 11 a writ of restitution, other than a conditional writ, shall be  
 12 stayed for a reasonable period not to exceed seven days to allow  
 13 the resident to arrange to remove ~~his~~ the resident's home from  
 14 the lot.

15 No change for subd 4

327C#12S

16 327C.12 RETALIATORY CONDUCT PROHIBITED.

17 A park owner may not increase rent, decrease services,  
 18 alter an existing rental agreement or seek to recover possession  
 19 or threaten such action in whole or in part as a penalty for a  
 20 resident's:

21 (a) good faith complaint to the park owner or to a  
 22 government agency or official; or

23 (b) good faith attempt to exercise ~~his~~ rights or remedies  
 24 pursuant to state or federal law. In any proceeding in which  
 25 retaliatory conduct is alleged, the burden of proving otherwise  
 26 shall be on the park owner if the owner's challenged action  
 27 began within 90 days after the resident engaged in any of the  
 28 activities protected by this section. If the challenged action  
 29 began more than 90 days after the resident engaged in the  
 30 protected activity, the party claiming retaliation must make a  
 31 prima facie case. The park owner must then prove otherwise.

329\*#03S

32 329.03 LICENSE, APPLICATION AND ISSUANCE.

33 Every person desiring to engage in or follow the business  
 34 or occupation mentioned in section 329.02 shall file an  
 35 application for a license for that purpose with the auditor of  
 36 the county in which ~~he desires to do~~ the desired business is to  
 37 be conducted, which application shall be made, in writing, to  
 38 the auditor, wherein the applicant shall specify whether he  
 39 intends the intent is to carry on ~~his~~ business by a wagon or  
 40 other vehicle, or on foot. The applicant shall, on or before  
 41 the time for filing ~~his~~ the application for license, pay or  
 42 cause to be paid to the treasurer of the county in which ~~his~~ the  
 43 application is filed the amount prescribed as and for such  
 44 license as provided in section 329.04, and the treasurer shall  
 45 issue a receipt for such sum to such person, which receipt he  
 46 the applicant shall present to the auditor of such county, who  
 47 thereupon shall issue the license.

329\*#04S

48 329.04 FEES.

49 When such person shall use in such business or occupation:  
 50 a wagon or other vehicle drawn by two or more horses, or other  
 51 beasts of burden, the sum of \$35; ~~when he shall use in such~~  
 52 ~~business or occupation~~ an automobile, or vehicle or conveyance  
 53 propelled by any mechanical power, the sum of \$50; ~~when he shall~~  
 54 ~~use in such business or occupation~~ a wagon or other vehicle  
 55 drawn by one horse, or other beast of burden, the sum of \$25;  
 56 ~~when he shall use in such business or occupation~~ a push or hand  
 57 cart, or other vehicle not drawn by horses, or other beasts of  
 58 burden, or propelled by any mechanical power, the sum of \$15;  
 59 and when ~~he shall conduct such~~ the person conducts business on  
 60 foot, by means of a pack, basket, or other means for carrying  
 61 merchandise on foot, the sum of \$7.50.

329\*#05S

62 329.05 TERMS OF LICENSE; FEES PUT IN COUNTY GENERAL  
63 REVENUE FUND.

64 Upon the presentation of such receipt from the treasurer of  
 65 such county, showing the payment of a fee as provided in section  
 66 329.04, the auditor of such county shall issue to the applicant  
 67 a license for a period of one year from the date of the issuance  
 68 of the receipt of such treasurer, the full license fee to be  
 69 paid in every case. Every such license shall authorize the  
 70 person receiving the same to use one wagon or other vehicle  
 71 drawn by two or more horses, or other beasts of burden, and no  
 72 more, or automobile or other vehicle or conveyance propelled by

1 mechanical power; one wagon or other vehicle drawn by one horse,  
 2 or other beast of burden, and no more; one push or hand cart or  
 3 other vehicle not drawn by horse, or other beast of burden, and  
 4 no more; or the baskets, packs, or other means necessary for one  
 5 peddler carrying ~~by-himself~~ merchandise on foot, as the case may \*  
 6 be. Such license shall not be assigned or transferable, and but  
 7 one person shall be authorized to carry on business under such  
 8 license, and no persons shall conduct business under the same  
 9 license as copartners, agents, or otherwise, and it shall be  
 10 good only in the county in which the same was issued. All  
 11 moneys received from the sale of such licenses shall be placed  
 12 to the credit of the general revenue fund of the county.

329\*#07S

13 329.07 LICENSE, EXHIBITION OF; FAILURE TO EXHIBIT;  
 14 PENALTY.

15 It shall be the duty of any person licensed as herein  
 16 provided, upon the demand of any sheriff, deputy sheriff,  
 17 constable, or police officer, to exhibit ~~his~~ the license, and \*  
 18 make affidavit that ~~he~~ the affiant is the person named therein. \*  
 19 Any person failing to exhibit ~~his~~ the license, when requested by \*  
 20 the persons above designated, shall be guilty of a misdemeanor.

329\*#08S

21 329.08 FARM AND GARDEN PRODUCTS EXCEPTED.

22 The provisions of sections 329.02 to 329.08 shall not apply  
 23 to ~~any-person~~ persons who may sell or peddle the products of the \*  
 24 farm or garden occupied and cultivated by ~~him~~ themselves. \*

329\*#11S

25 329.11 LICENSE; APPLICATION, ISSUANCE, FEE; BOND; AGENT  
 26 FOR SERVICE OF PROCESS.

27 Any transient merchant desiring to engage in, do, or  
 28 transact business by auction or otherwise, in any county in this  
 29 state shall file an application for a license for that purpose  
 30 with the auditor of the county in which ~~he-desires-to-do~~ the  
 31 desired business is to be conducted, which application shall \*  
 32 state ~~his~~ the name of the applicant, ~~his~~ the proposed place of \*  
 33 business, the kind of business proposed to be conducted, and the \*  
 34 length of time ~~for-which-he-desires~~ desired to do business. \*  
 35 Such transient merchant shall pay to the treasurer of such  
 36 county a license fee of \$150, any personal property taxes  
 37 payable by ~~him~~ the merchant pursuant to Minnesota Statutes 1949, \*  
 38 Sections 288.01 to 288.03, and shall give bond to the county in  
 39 an amount to be determined by the county treasurer, which shall  
 40 be not less than \$1,000 nor more than \$3,000 which bond shall be  
 41 approved by the treasurer and be conditioned that ~~he~~ the  
 42 merchant will in all things conform to the laws relating to \*  
 43 transient merchants and further conditioned on full compliance \*  
 44 with all material oral or written statements and representations  
 45 made by the seller, ~~his~~ the seller's agents, representatives, or \*  
 46 auctioneers with reference to merchandise sold or offered for  
 47 sale and on faithful performance under all warranties made with  
 48 reference thereto. The treasurer of such county shall issue to  
 49 such person receipts therefor, and such transient merchant shall  
 50 thereupon file such receipts with the auditor of such county,  
 51 who shall thereupon issue to such transient merchant a license  
 52 to do business as such at the place described in ~~his~~ the \*  
 53 application; and the kind of business to be done shall be  
 54 described therein. No license shall be good for more than one  
 55 person unless such person shall be a member of a copartnership,  
 56 nor for more than one place, and shall not be good outside of  
 57 the county in which it was issued. Such license shall be good  
 58 for a period of one year from the date of its issuance. The  
 59 auditor shall keep a record of such licenses in a book provided  
 60 for that purpose, which shall at all times be open for public  
 61 inspection.

62 The application shall further contain the applicant's  
 63 residence and business address for the prior two year period;  
 64 the type of business ~~in-which-he-has-been~~ engaged in during the \*  
 65 previous two years; and the name and address of the auctioneer  
 66 who will conduct the sale. No such sale shall be conducted in  
 67 the name of any person other than the bona fide owner of the  
 68 merchandise.

69 The applicant shall attach to the application an itemized  
 70 list of merchandise to be offered for sale reciting as to each  
 71 item a description thereof including serial number if any, the  
 72 owner's actual cost thereof, and a designation by number  
 73 corresponding with a number to be affixed to each item by a tag

1 which shall be kept fastened to the item at all times until sold.  
 2 Prior to the issuance of the license and approval of bond,  
 3 the applicant shall in writing appoint the county auditor ~~his~~ as \*  
 4 the applicant's agent to accept service of process in any action \*  
 5 commenced against the applicant arising out of the sale for  
 6 which the license is sought. Such action shall be brought in  
 7 the county where the sale was held.

329\*#14S

8 329.14 CERTAIN SALES EXCEPTED.  
 9 The provisions of sections 329.10 to 329.17 shall not apply  
 10 to sales made to dealers by commercial travelers or selling  
 11 agents in the usual course of business, nor to bona fide sales  
 12 of goods, wares, and merchandise by sample, for future delivery,  
 13 or to hawkers on the street, or to peddlers from vehicles,  
 14 baskets, or packs carried on their backs, or to sheriffs,  
 15 constables, or other public officers selling goods, wares, and  
 16 merchandise according to law; nor to bona fide assignees or  
 17 receivers appointed in this state selling goods, wares, and  
 18 merchandise for the benefit of creditors, nor to ~~any person~~ \*  
 19 persons who may sell or peddle the products of the farm or \*  
 20 garden occupied and cultivated by ~~him~~ themselves. \*

329\*#17S

21 329.17 VIOLATIONS; PENALTIES.  
 22 No change for subd 1  
 23 Subd. 2. MISDEMEANOR. Every person who shall engage  
 24 in or follow the business of a hawker or peddler without having  
 25 first obtained a license shall be guilty of a misdemeanor; and  
 26 upon conviction thereof punished by a fine of not less than \$15  
 27 nor more than \$100 or in default of the payment of such fine by  
 28 imprisonment in the county jail of the county ~~in which he shall~~ \*  
 29 ~~have been convicted~~ of conviction for a period of not exceeding \*  
 30 60 days for each offense.

330\*#01S

31 330.01 AUCTIONEERS' LICENSES, TO WHOM GRANTED.  
 32 Subdivision 1. (a) The county auditor may license any  
 33 person having the qualifications specified in clause (b) of this  
 34 subdivision as an auctioneer. The license shall be issued by  
 35 the auditor and shall authorize the licensee to conduct the  
 36 business of an auctioneer in the state of Minnesota for the  
 37 period of one year. It shall be recorded by the auditor in a  
 38 book kept for that purpose. Before the license is issued the  
 39 applicant shall pay into the county treasury a fee of \$20. The  
 40 auditor shall, not later than the 15th day of the following  
 41 month, transmit a copy of the license to the secretary of state  
 42 together with \$10 of the fee, which shall be deposited in the  
 43 general fund.  
 44 (b) A natural person is qualified to be licensed as an  
 45 auctioneer if 18 years of age or over and a resident of the  
 46 county of application for at least six months immediately  
 47 preceding the date of application. No copartnership,  
 48 association or corporation may be licensed as an auctioneer.  
 49 However, nothing in this subdivision shall be construed as  
 50 preventing auctioneers who are duly licensed in accordance with  
 51 the provisions of this chapter, from combining in associations,  
 52 copartnerships, or corporations, provided that each and every  
 53 member of these associations or copartnerships and each and  
 54 every person or agent conducting auction sales on behalf of  
 55 these corporations is a duly licensed auctioneer as provided in  
 56 this chapter. Nothing herein shall be construed to apply to a \*  
 57 ~~person selling at an auction~~ the owner of property owned by him \*  
 58 for at least six months selling it at an auction. \*

59 Subd. 2. Repealed, 1965 c 874 s 10

330\*#02S

60 330.02 BOND.  
 61 Every auctioneer, before making sales, shall give a  
 62 corporate surety bond to the county in a penal sum of not less  
 63 than \$1,000 nor more than \$3,000 to be fixed by the treasurer  
 64 and with sureties approved by the treasurer, conditioned that ~~he~~ \*  
 65 the auctioneer will pay all sums required by law and in all \*  
 66 things conform to the laws relating to auctioneers. The  
 67 treasurer, for approval, shall endorse ~~his approval upon~~ \*  
 68 such the bond, and file it in ~~his~~ the treasurer's office. \*

330\*#03S

69 330.03 ACCOUNT OF SALES.  
 70 Every auctioneer shall keep an accurate account of all  
 71 property sold ~~by him~~, the names of the persons from whom the \*

1 same was received and of those to whom it was sold, and the  
2 price.

330\*#04S

3 330.04 FORFEITURE FOR RECEIVING GOODS FROM MINORS OR  
4 SERVANTS.

5 Any licensed auctioneer who shall receive property for sale  
6 from any minor or servant, knowing ~~him-to-be-such~~ the person to \*  
7 be a minor or servant, shall forfeit to any person injured a sum \*  
8 not exceeding \$200.

330\*#06S

9 330.06 UNLICENSED SALES.

10 If Any person who shall sell or attempt to sell, either \*  
11 directly or indirectly, or as the agent of a duly licensed \*  
12 auctioneer, any property at auction without being licensed as an \*  
13 auctioneer, as herein provided, ~~he~~ shall be guilty of a \*  
14 misdemeanor; but the provisions of this chapter shall not extend  
15 to sales made by sheriffs, coroners, constables, collectors of  
16 taxes or sales of personal property under chattel mortgage or  
17 other lien.

330\*#08S

18 330.08 ADVERTISEMENTS.

19 All advertisements of auction sales shall carry the name or  
20 names, address or addresses, and the license number or numbers  
21 of the auctioneer or auctioneers conducting said sales. The  
22 secretary of state shall prescribe a numbering system for such  
23 licenses, which shall be applied ~~by-him~~ to all current licenses \*  
24 on or before September 1, 1969, and which shall provide a number  
25 for each license different from all others in the state, which  
26 shall be retained from year to year by each such licensee who  
27 shall reapply. The secretary of state shall notify each county  
28 auditor as to numbers assigned, the county auditor shall record  
29 the same and notify each licensee, and shall assign a number to  
30 each new licensee as directed by the secretary of state.

330\*#09S

31 330.09 NOTIFICATION OF CHANGE OF ADDRESS.

32 Notice in writing shall be given to the auditor of the  
33 county where licensed by each licensee of any change of ~~his~~ \*  
34 address, whereupon the auditor shall issue a duplicate license  
35 showing the licensee's new address for which a fee of \$3 shall  
36 be paid into the county treasury. The auditor shall notify the  
37 secretary of state of a change in address. A change of address,  
38 without notification to the auditor, shall result in the  
39 automatic cancellation of any license theretofore issued after  
40 the expiration of 30 days from the date of such change of  
41 address.

330\*#11S

42 330.11 APPLICATION BY NONRESIDENT.

43 Subdivision 1. A resident of another state which issues  
44 auctioneers' licenses to citizens of the state of Minnesota on  
45 the same or similar basis as to citizens of such state may be  
46 licensed as an auctioneer in the state of Minnesota upon  
47 compliance with the laws of the state of Minnesota relating to  
48 auctioneers' licenses. Eligibility of a nonresident applicant  
49 shall be tested by reference to the law of ~~his~~ the resident \*  
50 state, and in no case shall it be tested by reference to the law  
51 of some other state having reciprocity with the state of  
52 Minnesota in which the nonresident may qualify.

53 Subd. 2. A nonresident applicant must submit to the county  
54 auditor with ~~his~~ the application a duly certified copy of ~~his~~ \*  
55 the applicant's auctioneer's license, if one was issued ~~to-him~~ \*  
56 by ~~his~~ the resident state, and a copy of the state auction laws \*  
57 such as exist in ~~his~~ the resident state, certified by the \*  
58 secretary of state or other authorized state official of such \*  
59 state, that the submitted copy is a true copy of the auction  
60 laws of such state, as they exist at the date of application, in  
61 order that the attorney general of the state of Minnesota may  
62 determine whether reciprocity exists.

63 If, subsequent to the issuance of a nonresident license,  
64 the laws of the state of such nonresident shall not be  
65 reciprocal with the state of Minnesota, it shall result in the  
66 automatic revocation of the nonresident auctioneer's license  
67 issued to any resident of such state under the provisions of  
68 this chapter.

69 No change for subd 3

331\*#02S

70 331.02 LEGAL NEWSPAPER.

1 No change for subd 1 to 7  
 2 Subd. 8. DEFINITIONS. For the purposes of this  
 3 section, the following definitions shall apply except as  
 4 otherwise expressly provided or indicated by the context:  
 5 (1) "Newspaper" means a publication issued regularly by the  
 6 same person, persons, or corporation or ~~his-their-or-its~~ a  
 7 successor, successors or assigns, whether the name of the  
 8 publication be the same or different.  
 9 (2) "Known office of issue" means the office established  
 10 and open during its regular business hours for the gathering of  
 11 news, sale of advertisements and sale of subscriptions for the  
 12 newspaper, whether or not printing or any other newspaper  
 13 operations are conducted at or from that office; maintained by  
 14 the publisher or managing officer of the newspaper or ~~a-person~~  
 15 ~~or-persons-in-his-or-its-employ-and an employee~~ subject to ~~his~~  
 16 the direction and control of the publisher or managing officer  
 17 during regular business hours; and, unless the newspaper is  
 18 printed at that office, devoted exclusively during regular  
 19 business hours to the business of the newspaper and business  
 20 related thereto, including the sale of commercial printing,  
 21 stationery, office supplies and office equipment.  
 22 (3) "Municipality" means a city or town.  
 23 (4) "Local public corporation" means a municipality, school  
 24 district, or other political subdivision or local district,  
 25 commission, board or authority except a county.

26 No change for subd 9

331A#01S

27 331A.01 DEFINITIONS.  
 28 No change for subd 1 to 4  
 29 Subd. 5. "Newspaper" means a publication issued regularly  
 30 by the same person, or corporation, or ~~his-or-its~~ a successor,  
 31 whether the name of the publication is the same or different.  
 32 No change for subd 6  
 33 Subd. 7. "Public notice" means every notice required or  
 34 authorized by law or by order of a court to be published by a  
 35 qualified newspaper, and includes:  
 36 (a) every publication of laws, ordinances, resolutions,  
 37 financial information, and proceedings intended to give notice  
 38 in a particular area;  
 39 (b) every notice and certificate of election, facsimile  
 40 ballot, notice of referendum, notice of public hearing before a  
 41 governmental body, and notice of meetings of private and public  
 42 bodies required by law; and  
 43 (c) every summons, order, citation, notice of sale or other  
 44 notice which is intended to inform a person that ~~he~~ the person  
 45 may or shall do an act or exercise a right within a designated  
 46 period or upon or by a designated date.  
 47 (d) this subdivision contains no independent requirement  
 48 for the publication of any public notice.

49 No change for subd 8 to 10

332\*#13S

50 332.13 DEFINITIONS.  
 51 No change for subd 1  
 52 Subd. 2. "Debt prorating" means the performance of any one  
 53 or more of the following:  
 54 (a) managing the financial affairs of an individual by  
 55 distributing income or money to the creditors thereof;  
 56 (b) receiving funds for the purpose of distributing said  
 57 funds among creditors in payment or partial payment of  
 58 obligations of a debtor; or  
 59 (c) settling, adjusting, prorating, pooling, or liquidating  
 60 the indebtedness of a debtor. Any person so engaged or holding  
 61 ~~himself~~ out as so engaged shall be deemed to be engaged in debt  
 62 prorating regardless of whether or not a fee is charged for such  
 63 services. This term shall not include services performed by the  
 64 following when engaged in the regular course of their respective  
 65 businesses and professions:  
 66 (1) Attorneys at law, escrow agents, accountants,  
 67 broker-dealers in securities;  
 68 (2) Banks, state or national, trust companies, savings and  
 69 loan associations, building and loan associations, title  
 70 insurance companies, insurance companies and all other lending  
 71 institutions duly authorized to transact business in the state  
 72 of Minnesota, provided no fee is charged for such service;  
 73 (3) Persons who, as employees on a regular salary or wage  
 74 of an employer not engaged in the business of debt prorating,

- 1 perform credit services for their employer;  
 2 (4) Public officers acting in their official capacities and  
 3 persons acting pursuant to court order;  
 4 (5) Nonprofit corporations, organized under Minnesota  
 5 Statutes 1967, Chapter 317, giving debt prorating service,  
 6 provided no fee is charged for such service;  
 7 (6) Any person while performing services incidental to the  
 8 dissolution, winding up or liquidation of a partnership,  
 9 corporation or other business enterprise;  
 10 (7) The state of Minnesota, its political subdivisions,  
 11 public agencies and their employees;  
 12 (8) Credit unions, provided no fee is charged for such  
 13 service.

14 No change for subd 3 to 8

332\*#15S

15 332.15 LICENSE.

16 No change for subd 1 to 3

17 Subd. 4. BOND. Every applicant shall submit to the  
 18 commissioner at the time of the application for a license, a  
 19 surety bond to be approved by the attorney general in which the  
 20 applicant shall be the obligor, in a sum to be determined by the  
 21 commissioner but not less than \$5,000, and in which an insurance  
 22 company, which is duly authorized by the state of Minnesota to  
 23 transact the business of fidelity and surety insurance, shall be  
 24 a surety; provided, however, the commissioner may accept a  
 25 deposit in cash, or securities such as may legally be purchased  
 26 by savings banks or for trust funds of an aggregate market value  
 27 equal to the bond requirement, in lieu of the surety bond, such  
 28 cash or securities to be deposited with the state treasurer.  
 29 The commissioner may, ~~in his discretion,~~ also require a fidelity \*  
 30 bond in an appropriate amount covering employees of any  
 31 applicant. Each branch office or additional place of business  
 32 of an applicant shall be bonded as provided herein. In  
 33 determining the bond amount necessary for the maintenance of any  
 34 office be it surety, fidelity or both the commissioner shall  
 35 consider the financial responsibility, experience, character and  
 36 general fitness of the agency and its operators and owners; the  
 37 volume of business handled or proposed to be handled; the  
 38 location of the office and the geographical area served or  
 39 proposed to be served; and such other information the  
 40 commissioner may deem pertinent based upon past performance,  
 41 previous examinations, annual reports and manner of business  
 42 conducted in other states.

43 Subd. 5. CONDITION OF BOND. The applicant shall be  
 44 the obligor. The bond shall run to the state of Minnesota for  
 45 the use of the state and of any person or persons who may have a  
 46 cause of action against the obligor arising out of ~~his~~ the  
 47 obligor's activities as a debt prorater. Such bond shall be \*  
 48 conditioned that said obligor will not commit any fraudulent act \*  
 49 and will faithfully conform to and abide by the provisions of  
 50 sections 332.12 to 332.29 and of all rules and regulations  
 51 lawfully made by the commissioner hereunder and pay to the state  
 52 and to any such person or persons any and all money that may  
 53 become due or owing to the state or to such person or persons  
 54 from said obligor under and by virtue of the provisions of  
 55 sections 332.12 to 332.29.

56 Subd. 6. RIGHT OF ACTION ON BOND. If the licensee  
 57 has failed to account to a debtor or distribute to the debtor's  
 58 creditors such amounts as are required by sections 332.12 to  
 59 332.29 and the contract between the debtor and licensee, the  
 60 debtor ~~his~~ or the debtor's legal representative or receiver, the \*  
 61 commissioner or the attorney general, shall have, in addition to  
 62 all other legal remedies, a right of action in the name of the  
 63 debtor on the bond or the security given pursuant to the  
 64 provisions of this section, for loss suffered by the debtor, not  
 65 exceeding the face of the bond or security, and without the  
 66 necessity of joining the licensee in such suit or action.

332\*#16S

67 332.16 QUALIFICATIONS FOR LICENSE.

68 Upon the filing of the application, approval of the bond  
 69 and payment of the specified fees, the commissioner shall  
 70 conduct an investigation. The commissioner shall thereafter  
 71 issue a license to the applicant ~~if he shall find~~ on finding: \*

72 (a) That the financial responsibility, experience,  
 73 character and general fitness of the applicant, and of the  
 74 members thereof, if the applicant be a partnership or



1 association, and of the officers, directors and each of the  
 2 stockholders who own more than five percent of outstanding stock  
 3 thereof, if the applicant be a corporation, are such as to  
 4 indicate that the business will be operated fairly and honestly  
 5 within the purposes of sections 332.12 to 332.29, and that any  
 6 other business or profession engaged in by the applicant or such  
 7 persons does not create a conflict of interest with respect to  
 8 the ability to represent an individual fairly;

9 (b) That neither the applicant, nor any of such persons has  
 10 been convicted of any crime or ordinance involving moral  
 11 turpitude within the past ten years;

12 (c) That neither the applicant nor any of such persons has  
 13 had a record of having defaulted in the payment of money  
 14 collected for others, including the discharge of debts through  
 15 bankruptcy proceedings;

16 (d) That neither the applicant nor any of such persons has  
 17 had a license to engage in debt prorating revoked or removed in  
 18 this or any other state;

19 (e) That neither the applicant nor any of such persons  
 20 operates or is an employee or owner of a collection agency or  
 21 process serving business; and

22 (f) That such person or the applicant and all of such  
 23 persons have fully complied with the requirements of sections  
 24 332.12 to 332.29 and all valid rules, regulations and orders of  
 25 the commissioner. Said license shall permit the applicant to  
 26 engage in the debt prorating service business in accordance with  
 27 the provisions of sections 332.12 to 332.29 at the location  
 28 specified in the application. The license shall remain in full  
 29 force and effect for one calendar year or until it is  
 30 surrendered by the licensee or revoked or suspended by the  
 31 commissioner pursuant hereto.

332\*#19S

332.19 DENIAL OF LICENSE.

33 After January 1, 1970, all applications for an initial  
 34 license hereunder shall be approved or denied within 60 days of  
 35 their filing with the commissioner. The applicant shall be so  
 36 notified of any denial of ~~his~~ the application by certified mail  
 37 directed to ~~him~~ the applicant at the address shown on the  
 38 application. The applicant shall be given an opportunity to be  
 39 heard thereon before the commissioner within 30 days after such  
 40 notice is served. Such notice and hearing shall comply with the  
 41 Minnesota administrative procedure act, Minnesota Statutes,  
 42 Sections 14.57 to 14.70. Persons subject to the terms of  
 43 sections 332.12 to 332.29 who are providing debt prorating  
 44 services on July 1, 1969 shall submit their applications for  
 45 licenses not later than September 1, 1969.

\*  
\*

332\*#20S

332.20 SUSPENDING, REVOKING, OR REFUSING TO RENEW  
LICENSE.

48 No change for subd 1

49 Subd. 2. CAUSE. The commissioner may revoke,  
 50 suspend and refuse to renew any license hereunder ~~if he shall~~  
 51 find on finding that:

\*  
\*

52 (a) Any licensee has failed to pay any fee required herein,  
 53 or to maintain in effect the bond required under the provisions  
 54 of sections 332.12 to 332.29 or failed to comply with any order,  
 55 decision or finding of the commissioner made pursuant to and  
 56 within the authority of sections 332.12 to 332.29; or that

57 (b) The licensee has violated any provisions of sections  
 58 332.12 to 332.29 or any rule, regulation or direction lawfully  
 59 made by the commissioner under and within the authority of  
 60 sections 332.12 to 332.29; or that

61 (c) Any material fact or condition exists which, if it had  
 62 existed at the time of the original application for a license,  
 63 would have warranted the commissioner in refusing its issuance;  
 64 or that

65 (d) Any applicant or party to an application has made any  
 66 false statement or representation to the commissioner in  
 67 applying for a license hereunder.

68 No change for subd ,3 to 4

332\*#22S

332.22 BOOKS, RECORDS, AND INFORMATION.

70 Subdivision 1. RECORDS RETENTION. Every licensee  
 71 shall keep, and use in ~~his~~ the licensee's business, such books,  
 72 accounts, and records as will enable the commissioner to  
 73 determine whether such licensee is complying with the provisions

\*

1 of sections 332.12 to 332.29 and of the rules, regulations,  
2 orders and directives promulgated by the commissioner pursuant  
3 to sections 332.12 to 332.29. Every licensee shall preserve  
4 such books, accounts and records for at least five years after  
5 making the final entry on any transaction recorded therein.  
6 Examinations of the books, records and method of operations as  
7 shall be conducted under the supervision of the commissioner  
8 herein shall be done at the cost of the licensee. The cost  
9 shall be assessed as determined pursuant to section 46.131, as  
10 amended from time to time.

11 Subd. 2. STATEMENTS TO DEBTORS. Each licensee shall  
12 maintain and shall make available records and accounts which  
13 will enable each debtor to ascertain the amounts paid to the  
14 creditors of said debtor. A statement showing amounts received  
15 from the debtor, disbursements to each creditor, amounts which  
16 any creditor has agreed to accept as payment in full for any  
17 debt owed ~~him~~ the creditor by the debtor, charges deducted by \*  
18 the licensee and such other information as the commissioner may  
19 prescribe shall be furnished by the licensee to the debtor at  
20 least once every three months and, in addition, upon any  
21 cancellation or termination of the contract. In addition to the  
22 statements required by this subdivision, each debtor shall have  
23 reasonable access, without cost, to information in the  
24 licensee's files applicable to such debtor. Such statements,  
25 records and accounts shall otherwise remain confidential except  
26 for duly authorized state and government officials, the  
27 commissioner, the attorney general, the debtor and ~~his~~ the \*  
28 debtor's representative and designees. Each licensee shall \*  
29 prepare and retain in the file of each debtor a written analysis  
30 of the debtor's income and expenses to substantiate that the  
31 plan of payment is feasible and practical.

332\*#23S

32 332.23 FEES, PAYMENTS, AND CANCELLATIONS.

33 No change for subd 1

34 Subd. 2. WITHDRAWAL OF FEE. The licensee may  
35 withdraw and retain as partial payment of ~~his~~ the licensee's \*  
36 total fee not more than 15 percent of any sum deposited with the  
37 licensee by the debtor for distribution. The remaining 85  
38 percent must be disbursed to listed creditors pursuant to and in  
39 accordance with the contract between the debtor and the licensee  
40 within 35 days after receipt. Total payment to licensee for  
41 services rendered, excluding the origination fee, shall not  
42 exceed 15 percent of funds deposited with licensee by debtor for  
43 distribution.

44 No change for subd 3 to 6

45 Subd. 7. EXCESS CHARGES. If a licensee contracts  
46 for, receives or makes any charge in excess of the maximum  
47 permitted by sections 332.12 to 332.29, except as the result of  
48 an accidental and bona fide error, the licensee's contract with  
49 the debtor shall be void and the licensee shall return to the  
50 debtor the amount of all moneys received from the debtor or on  
51 ~~his~~ the debtor's behalf from the commencement of the contract \*  
52 which have not been distributed to creditors.

53 Subd. 8. PAYMENTS HELD IN TRUST. Any payment  
54 received by a licensee from or on behalf of a debtor shall be  
55 held in trust by the licensee from the moment it is received.  
56 The licensee shall not commingle such payment with ~~his~~ the \*  
57 licensee's own property or funds, but shall maintain a separate \*  
58 trust account and deposit in such account all such payments  
59 received. All disbursements, whether to the debtor or to the  
60 creditors of the debtor, or to the licensee, shall be made from  
61 such account.

332\*#24S

62 332.24 PROHIBITIONS.

63 A licensee shall not:

64 (1) Purchase from a creditor any obligation of a debtor;

65 (2) Use, threaten to use, seek to have used or seek to have  
66 threatened the use of any legal process, including but not  
67 limited to garnishment and repossession of personal property,  
68 against any debtor while the contract between the licensee and  
69 the debtor remains executory;

70 (3) Advertise or make any statement or representation with  
71 regard to the rates, terms, or conditions of debt prorating  
72 service which is false, misleading or deceptive;

73 (4) Require as a condition of performing debt prorating  
74 services nor shall the contract between the licensee and a

1 debtor require the purchase of any services, stock, insurance,  
 2 commodity or other property or any interest therein either by  
 3 the debtor or the licensee;  
 4 (5) Compromise any debts unless the prior written approval  
 5 of the debtor has been obtained to such compromise and unless  
 6 such compromise shall inure solely to the benefit of the debtor;  
 7 (6) Receive from any debtor as security or in payment of  
 8 any fee a promissory note or other promise to pay or any  
 9 mortgage or other security, whether as to real or personal  
 10 property;  
 11 (7) Lend money or credit to any debtor if any interest or  
 12 fee is charged;  
 13 (8) Take any confession of judgment or power of attorney to  
 14 confess judgment against the debtor or appear as the debtor in  
 15 any judicial proceedings;  
 16 (9) Take, concurrent with the signing of the contract, or  
 17 as a part of the contract or as part of the application for the  
 18 contract, a release of any obligation required to be performed  
 19 on the part of the licensee;  
 20 (10) Offer, pay or give any substantial cash fee, gift,  
 21 bonus, premium, reward or other compensation to any person,  
 22 other than an employee of the licensee for referring any  
 23 prospective customer to the licensee;  
 24 (11) Receive any cash, fee, gift, bonus, premium, reward,  
 25 or other compensation from any person other than the debtor or a  
 26 person in the debtor's behalf in connection with his activities \*  
 27 as a licensee; provided, however, that this paragraph shall not  
 28 apply to a licensee which is a bona fide nonprofit corporation,  
 29 duly organized under chapter 317;  
 30 (12) Enter into a contract with a debtor unless a thorough  
 31 written budget analysis indicates that the debtor can reasonably  
 32 meet the requirements of the financial adjustment plan and will  
 33 be benefited by the plan;  
 34 (13) In any way charge or purport to charge or provide any  
 35 debtor credit insurance in conjunction with any contract or  
 36 agreement involved in the financial adjustment plan.  
 37 Any violation of the prohibitions contained in this section  
 38 shall be cause for the suspension, revocation or refusal to  
 39 renew a license pursuant to section 332.20 and shall also  
 40 constitute a violation of the provisions of sections 332.12 to  
 41 332.29 to which the penalties prescribed in section 332.26 shall  
 42 attach. In addition to such penalties any person attempting to  
 43 perform a debt prorating service in this state without  
 44 maintaining an office in this state shall be subject to a fine  
 45 not to exceed \$10,000, as determined by the commissioner.

332\*#33S

46 332.33 LICENSES.  
 47 No change for subd 1 to 2  
 48 Subd. 3. Licenses granted by the commissioner of commerce  
 49 under sections 332.31 to 332.45 shall expire on June 30. All  
 50 renewals of licenses shall likewise expire on June 30. Each  
 51 license shall plainly state the name and business address of the  
 52 licensee, and shall be posted in a conspicuous place in the  
 53 office where the business is transacted. The fee for each  
 54 license and renewal shall be \$100. ~~if the~~ A licensee who \*  
 55 ~~desires to carry on business in more than one place within the~~  
 56 ~~state, he shall procure a license for each place where the~~ \*  
 57 business is to be conducted.  
 58 Subd. 4. The commissioner may require such financial  
 59 statements and references of all applicants for a license as ~~he~~ \*  
 60 the commissioner deems necessary; and may make or cause to be \*  
 61 made an independent investigation concerning the applicant's  
 62 reputation, integrity, competence, and net worth, at the expense  
 63 of the applicant for such initial investigation, not to exceed  
 64 \$100, and for that purpose may require such deposit against the  
 65 cost thereof as he the commissioner deems adequate. Such \*  
 66 investigation may cover all managerial personnel employed by or  
 67 associated with the applicant.  
 68 Subd. 5. Every application for a license or renewal shall  
 69 be acted upon promptly by the commissioner but in no event more  
 70 than 45 days after receipt of said application. If the  
 71 application shall comply in form and substance with the  
 72 provisions of sections 332.31 to 332.45 and the rules and  
 73 regulations promulgated thereunder and the commissioner shall  
 74 find that the applicant is qualified under the provisions of  
 75 sections 332.31 to 332.45, the commissioner shall issue a

1 license forthwith. If the application shall not be sufficient  
 2 in form or substance, the commissioner shall reject it and  
 3 notify the applicant of the manner in which it is deficient.  
 4 Such rejection shall be without prejudice to the filing of a new  
 5 application. ~~if-the-commissioner-shall-find~~ On finding that the \*  
 6 applicant is not qualified under the provisions of sections \*  
 7 332.31 to 332.45, ~~he~~ the commissioner shall reject the  
 8 application and shall give the applicant written notice of such  
 9 rejection and the reasons therefor.

10 No change for subd 6

332\*#34S

11 332.34 BOND.

12 The commissioner of commerce shall require each licensee to  
 13 file and maintain in force a corporate surety bond, in a form to  
 14 be prescribed by, and acceptable to, the commissioner ~~and~~ \*  
 15 ~~acceptable-to-him,~~ and in the sum of \$10,000 effective July 1, \*  
 16 1982 and \$20,000 effective July 1, 1983. An applicant for a new  
 17 or renewal license may request that the amount of the bond  
 18 hereby required be reduced to an amount which shall be not less  
 19 than \$5,000. This request may be granted upon a showing that  
 20 the total dollar amount received from debtors by the collection  
 21 agency in the preceding fiscal year did not exceed \$30,000.

332\*#38S

22 332.38 APPLICATION IN CASE OF PRETENDED PURCHASE,  
 23 ASSIGNMENT OR USE OF A FICTITIOUS NAME.

24 The provisions of sections 332.31 to 332.45 shall apply to  
 25 any person who, by any device, subterfuge or pretense, makes a  
 26 pretended purchase or takes a pretended assignment of accounts  
 27 from ~~any-other-person~~ another for the purpose of evading \*  
 28 provisions of sections 332.31 to 332.45, or, uses a fictitious \*  
 29 name or any name other than ~~his-or-its~~ the person's own name  
 30 which would indicate to the debtor that a third person is  
 31 collecting or attempting to collect such account or claim.

332\*#40S

32 332.40 INVESTIGATION, SUSPENSION AND REVOCATION OF  
 33 LICENSES.

34 No change for subd 1 to 2

35 Subd. 3. COMMISSIONER'S POWERS. For the purpose of  
 36 any investigation or proceeding under sections 332.31 to 332.45,  
 37 the commissioner or any person designated by ~~him~~ the \*  
 38 commissioner may administer oaths and affirmations, subpoena \*  
 39 collection agencies and compel their attendance, take evidence  
 40 and require the production of any books, papers, correspondence,  
 41 memoranda, agreements or other documents or records which the  
 42 commissioner deems relevant or material to the inquiry. The  
 43 subpoena shall contain a written statement setting forth the  
 44 circumstances which have reasonably caused the commissioner to  
 45 believe that a violation of sections 332.31 to 332.45 may have  
 46 occurred.

47 In the event that the collection agency refuses to obey the  
 48 subpoena, or should the commissioner, upon completion of the  
 49 examination of the collection agency, reasonably conclude that a  
 50 violation has occurred, the commissioner may examine additional  
 51 witnesses, including third parties, as may be necessary to  
 52 complete the investigation.

53 Any subpoena issued pursuant to this section shall be  
 54 served by certified mail. Service shall be made at least 15  
 55 days prior to the date of appearance.

56 No change for subd 4

332\*#42S

57 332.42 REPORTS AND RECORDS.

58 Subdivision 1. The commissioner of commerce may at any  
 59 time require a licensee to submit ~~to-him~~ a verified financial \*  
 60 statement for examination by the commissioner ~~so-that-he-may~~ to \*  
 61 determine whether the licensee is financially responsible to  
 62 carry on a collection agency business within the intents and  
 63 purposes of sections 332.31 to 332.45.

64 Subd. 2. The commissioner shall require the licensee to  
 65 keep such books and records in ~~his~~ the licensee's place of \*  
 66 business in this state as will enable the commissioner to  
 67 determine whether there has been compliance with the provisions  
 68 of sections 332.31 to 332.45, unless the agency is a foreign  
 69 corporation duly authorized, admitted and licensed to do  
 70 business in this state and complies with all the requirements of  
 71 Minnesota Statutes 1967, chapter 303 and with all other  
 72 requirements of sections 332.31 to 332.45. Every licensee shall

1 preserve the records of final entry used in such business for a  
 2 period of five years after final remittance is made on any  
 3 amount placed with licensee for collection or after any account  
 4 has been returned to the claimant on which one or more payments  
 5 have been made.

332\*#43S

6 332.43 DELINQUENT COLLECTION AGENCIES.

7 Subdivision 1. If the commissioner shall determine that a  
 8 licensee is insolvent or ~~that-he~~ has collected accounts but has \*  
 9 failed to remit money due to any claimant within 45 days from  
 10 the end of the month in which collection was made, or when the  
 11 license of a collection agency has expired or terminated for any  
 12 reason whatsoever, the commissioner, ~~if-he-shall-determine on~~ \*  
 13 determining such action necessary to protect the public \*  
 14 interest, may apply to the district court for the county in  
 15 which the main office of such agency is located for appointment  
 16 of a receiver to receive the assets of the licensee for the  
 17 purpose of liquidating or rehabilitating its business and or for  
 18 such other relief as the nature of the case and the interest of  
 19 the claimants may require. The reasonable and necessary  
 20 expenses of the receivership shall constitute the first claim on  
 21 the bond.

22 Subd. 2. Repealed, 1979 c 144 s 7

23 Subd. 3. Repealed, 1979 c 144 s 7

333\*#06S

24 333.06 PLEADING FAILURE TO FILE CERTIFICATE; COSTS.

25 If any person conducting a business contrary to the terms  
 26 of sections 333.001 to 333.06 shall, prior to the filing of the  
 27 certificate therein prescribed, commence a civil action,  
 28 including an action to recover possession of real property in  
 29 any court of this state on account of any contract made by, or  
 30 transaction had on behalf of the business, the defendant may  
 31 plead such failure in abatement of the action; and all  
 32 proceedings had in the action shall thereupon be stayed until  
 33 the certificate provided for by sections 333.001 to 333.06 is  
 34 duly filed, and if the defendant, ~~in-case-he~~ prevails in the \*  
 35 action, the defendant shall also be entitled to tax \$50 costs, \*  
 36 in addition to such other statutory costs as may be allowed by  
 37 law, and, ~~in-case-he~~ if the defendant does not prevail in the \*  
 38 action, the defendant shall be entitled to deduct \$50 from the \*  
 39 judgment otherwise recoverable therein and if a judgment for  
 40 money is not otherwise recoverable therein, ~~he~~ the defendant \*  
 41 shall be entitled to tax \$50 costs. If such a person defends \*  
 42 against a civil action, the plaintiff shall be entitled to tax  
 43 \$50 costs, regardless of which party prevails upon the merits.

333\*#11S

44 333.11 ISSUANCE OF CERTIFICATES.

45 Upon granting registration the secretary of state shall  
 46 issue ~~his~~ a certificate to the petitioners, setting forth the \*  
 47 fact of such registration.

333\*#12S

48 333.12 FEES.

49 The fees of the secretary of state for registration,  
 50 alteration, cancelation, searches made ~~by-him~~, and certificates \*  
 51 issued ~~by-him~~, pursuant to sections 333.07 to 333.11, shall be \*  
 52 \$10. The fees so collected shall be paid by the secretary of  
 53 state into the state treasury.

333\*#135S

54 333.135 IMPROPER USE OF INSIGNIA.

55 Every person who shall wilfully wear the insignia or  
 56 rosette of the military order of the Loyal Legion of the United  
 57 States, or the badge or button of the Grand Army of the  
 58 Republic, the American Legion, the Veterans of Foreign Wars, the  
 59 Disabled American Veterans of the World War, or of any other  
 60 veterans' organization, or any similitude thereof; or who shall  
 61 wilfully wear any badge, emblem, or insignia pertaining to the  
 62 order of Masons, Odd Fellows, Knights of Pythias, or any other  
 63 secret order or society, or any similitude thereof; or who shall  
 64 use any such badge, button, or insignia to obtain aid or  
 65 assistance, or who shall use the name of any such order or  
 66 society for gain, unless ~~he-shall-be~~ entitled to so use the same \*  
 67 under the constitution, bylaws, rules, and regulations of such  
 68 order, shall be guilty of a misdemeanor and shall be punished by  
 69 imprisonment in the county jail for not more than 60 days or by  
 70 a fine of not more than \$50 or by both.

333\*#18S

1 333.18 TRADEMARKS AND SERVICE MARKS; DEFINITIONS.  
2 Subdivision 1. (1) The term "trademark" as used in  
3 sections 333.18 to 333.31 means any word, name, symbol, or  
4 device or any combination thereof adopted and used by a person  
5 to identify goods made or sold by ~~him~~ that person and to \*  
6 distinguish them from goods made or sold by others.  
7 (2) The term "service mark" as used in sections 333.18 to  
8 333.31 means a word, name, symbol, or device or any combination  
9 thereof adopted and used by a person to identify ~~his~~ that \*  
10 person's services and to distinguish them from services of \*  
11 others and includes without limitation the marks, names,  
12 symbols, titles, designations, slogans, character names, and  
13 distinctive features of radio or other advertising used in  
14 commerce.  
15 (3) The term "certification mark" means a mark used upon or  
16 in connection with the products or services of one or more  
17 persons other than the owner of the mark to certify regional or  
18 other origin, material, mode of manufacture, quality, accuracy  
19 or other characteristics of such goods or services or that the  
20 work or labor on the goods or services was performed by members  
21 of a union or other organization.  
22 (4) The term "collective mark" means a trademark or service  
23 mark used by the members of a cooperative, an association or  
24 other collective group or organization and includes marks used  
25 to indicate membership in a union, an association or other  
26 organization.  
27 No change for subd 2  
28 Subd. 3. The term "applicant" as used herein embraces the  
29 person filing an application for registration of a mark under  
30 sections 333.18 to 333.31, ~~his~~ the applicant's legal \*  
31 representatives, successors or assigns.  
32 Subd. 4. The term "registrant" as used herein embraces the  
33 person to whom the registration of a mark under sections 333.18  
34 to 333.31 is issued, ~~his~~ a legal representatives representative, \*  
35 successors or assigns.  
36 No change for subd 5  
333\*#19S  
37 333.19 UNREGISTRABLE MATTER; COLLECTIVE AND  
38 CERTIFICATION MARKS.  
39 Subdivision 1. A trademark or service mark by which the  
40 goods or services of any applicant for registration may be  
41 distinguished from the goods or services of others shall not be  
42 registered if it:  
43 (1) consists of or comprises immoral, deceptive or  
44 scandalous matter; or  
45 (2) consists of or comprises matter which may disparage or  
46 falsely suggest a connection with persons, living or dead,  
47 institutions, beliefs, or national symbols, or bring them into  
48 contempt, or disrepute; or  
49 (3) consists of or comprises the flag or coat of arms or  
50 other insignia of the United States, or of any state or  
51 municipality, or of any foreign nation, or any simulation  
52 thereof; or  
53 (4) consists of or comprises the name, signature or  
54 portrait of any living individual, except with ~~his~~ written \*  
55 consent; or  
56 (5) consists of a mark which, (a) when applied to the goods  
57 or used to identify the services of the applicant, is merely  
58 descriptive or deceptively misdescriptive of them, or (b) when  
59 applied to the goods or used to identify the services of the  
60 applicant is primarily geographically descriptive or deceptively  
61 misdescriptive of them, or (c) is primarily merely a surname  
62 provided, however, that nothing in this subsection (5) shall  
63 prevent the registration of a mark used in this state by the  
64 applicant which has become distinctive of the applicant's goods  
65 or services. The secretary of state may accept as evidence that  
66 the mark has become distinctive, as applied to the applicant's  
67 goods or used to identify the services, proof of substantially  
68 exclusive and continuous use thereof as a mark by the applicant  
69 in this state for the five years next preceding the date of the  
70 filing of the application for registration; or  
71 (6) consists of or comprises a mark which so resembles a  
72 mark registered in this state or a corporate or limited  
73 partnership name in use or reserved in this state by another, or  
74 a mark or trade name previously used in this state by another  
75 and not abandoned, as to be likely, when applied to the goods or

1 used to identify the services of the applicant, to cause  
2 confusion or mistake or to deceive. The secretary of state may  
3 require affidavits by both the applicant and by the holder of  
4 the previously registered name or mark in making this  
5 determination.

6 No change for subd 2

333\*#20S

7 333.20 APPLICATION; FORM, SIGNATURE, SPECIMEN OF MARK,  
8 FEE.

9 Subdivision 1. Subject to the limitations set forth in  
10 sections 333.18 to 333.31, any person who adopts and uses a  
11 trademark or a service mark in this state may file in the office  
12 of the secretary of state, on a form to be furnished by the  
13 secretary of state, an application for registration of that mark  
14 setting forth, but not limited to, the following information:

15 (1) the name and business address of the person applying  
16 for such registration; and, if a corporation, the state of  
17 incorporation,

18 (2) the goods or services in connection with which the mark  
19 is used and the mode or manner in which the mark is used in  
20 connection with such goods or services and the class in which  
21 such goods or services fall,

22 (3) the date when the mark was first used in this state by  
23 the applicant or his a predecessor in business, and

24 (4) ~~a~~ the applicant's statement ~~that the applicant believes~~  
25 of belief that he the applicant is the owner of the mark and  
26 that no other person has the right to use such mark in this  
27 state either in the identical form thereof or in such near  
28 resemblance thereto as might be calculated to deceive or to be  
29 mistaken therefor.

\*  
\*  
\*

30 No change for subd 2 to 4

333\*#21S

31 333.21 CERTIFICATE OF REGISTRATION, ISSUANCE,  
32 EVIDENTIARY EFFECT.

33 Subdivision 1. Upon a finding by the secretary of state  
34 that the mark and application for registration comply with the  
35 requirements of sections 333.18 to 333.31, and that the class  
36 indicated, if any, in which the mark is to be registered is not  
37 clearly incorrect, he the secretary of state shall cause a  
38 certificate of registration to be issued and delivered to the  
39 applicant. The certificate of registration shall be issued  
40 under the signature of the secretary of state and the seal of  
41 the state, and shall show the registrant's name and business  
42 address and, if a corporation, the state of incorporation, the  
43 date claimed for the first use of the mark in this state, the  
44 class of goods or services and a description of the goods or  
45 services in connection with which the mark is used, a  
46 reproduction of the mark, the registration date and the term of  
47 the registration.

\*

48 No change for subd 2

333\*#22S

49 333.22 TERM OF REGISTRATION; RENEWAL, NOTICE, FEE.

50 No change for subd 1 to 2

51 Subd. 3. Any registration in force on the date on which  
52 Laws 1959, Chapter 600 shall become effective, shall expire two  
53 years after and may be renewed by filing an application with the  
54 secretary of state on a form furnished by ~~him~~ the secretary of  
55 state and paying the aforementioned renewal fee therefor within  
56 six months prior to the expiration of the registration provided  
57 the mark is in use at the time of application for renewal and  
58 there are no intervening rights.

\*  
\*

59 No change for subd 4

333\*#23S

60 333.23 CONVEYANCES OF MARKS; RECORDATION, FEE, NECESSITY.

61 The secretary of state shall record written and verified  
62 conveyances of any mark along with that part of the goodwill of  
63 the business in connection with which the mark is used, and of  
64 the corresponding application or registration which is presented  
65 ~~to him~~ for recording along with a payment of a fee of \$5 and  
66 shall issue in the name of the assignee a new certificate for  
67 the remainder of the term of the registration or of the last  
68 renewal thereof. An assignment of any registration under  
69 sections 333.18 to 333.31 shall be void as against any  
70 subsequent purchaser for valuable consideration without notice  
71 unless it is recorded with the secretary of state within three  
72 months after the date thereof or prior to such subsequent

\*

1 purchase.

333\*#25S

2 333.25 CANCELLATION OF MARKS.

3 Subdivision 1. The secretary of state shall cancel from  
4 the register:

5 (1) after two years from the effective date of Laws 1959,  
6 Chapter 600, all registrations under prior acts which are not  
7 renewed in accordance with sections 333.18 to 333.31;

8 (2) any registration concerning which the secretary of  
9 state shall receive a voluntary request for cancellation thereof  
10 from the registrant;

11 (3) all registrations granted under sections 333.18 to  
12 333.31 and not renewed in accordance with the provisions thereof;

13 (4) in compliance with an order of a district court, any  
14 registration concerning which the court shall find:

15 a. that the registered mark has been abandoned,

16 b. that the registrant is not the owner of the mark,

17 c. that the registration was granted improperly,

18 d. that the registration was obtained fraudulently,

19 e. that the registered mark is so similar, as to be likely

20 to cause confusion or mistake or to deceive, to a mark  
21 registered by another person previously in this state or in the  
22 United States Patent Office, prior to the date of the filing of

23 the application for registration by the registrant hereunder,  
24 and not abandoned; provided, however, that should the registrant  
25 prove that ~~he~~ the registrant is the prior user of the mark or

26 ~~that he is~~ the owner of a concurrent registration of ~~his~~ the  
27 mark in the United States Patent Office covering an area

28 including this state, the registration hereunder shall not be  
29 cancelled.

30 (5) When a district court shall order cancellation of a  
31 registration on any ground.

32 No change for subd 2

333\*#27S

33 333.27 IMPROPER REGISTRATION; LIABILITY.

34 ~~Any person~~ Persons who shall for ~~himself~~ themselves, or on  
35 behalf of any other person, procure the filing or registration  
36 of any mark in the office of the secretary of state under the  
37 provisions hereof, by knowingly making any false or fraudulent  
38 representation or declaration, verbally or in writing, or by any  
39 other fraudulent means, shall be liable to pay all damages  
40 sustained in consequence of such filing or registration, to be  
41 recovered by or on behalf of the party injured thereby in any  
42 district court.

333\*#30S

43 333.30 MARKS ACQUIRED AT COMMON LAW.

44 Nothing herein shall adversely affect a person's rights or  
45 the enforcement of ~~his~~ the rights in a mark acquired in good  
46 faith at any time at common law, except that ~~his~~ the rights as  
47 against the registrant of the same or confusingly similar mark  
48 are limited to the areas of ~~his~~ the person's use established  
49 prior to the registration date and areas in which ~~his~~ the  
50 person's mark has become known prior to the registration date.

333\*#31S

51 333.31 SERVICE OF PROCESS UPON NONRESIDENT REGISTRANTS.

52 Service in duplicate of any paper relating to a  
53 nonresident's registration under sections 333.18 to 333.31, on  
54 the secretary of state, shall constitute service on said  
55 nonresident registrant. The secretary of state shall forward  
56 one copy of such paper to said registrant at ~~his~~ the  
57 registrant's last known address.

333\*#41S

58 333.41 TRADEMARKS OF WORKMEN'S WORKERS' UNIONS.

59 When any person, or any association or union of workmen  
60 workers, shall have adopted or used any label, trademark, term,  
61 design, device, or form of advertisement for the purpose of  
62 designating, making known, or distinguishing any product of  
63 labor as having been made, produced, prepared, packed, or put on  
64 sale by such person, association, or union, or by a member  
65 thereof, it shall be unlawful to counterfeit or imitate the  
66 same, or to use, sell, offer for sale, or in any way utter or  
67 circulate, any counterfeit or imitation of any such label,  
68 trademark, term, design, device, or form of advertisement.

333\*#42S

69 333.42 COUNTERFEITING OR DEALING IN COUNTERFEITS; HOW  
70 PUNISHED.



1 Every person who shall counterfeit or imitate any such  
 2 label, trademark, term, design, device, or form of  
 3 advertisement, or shall sell, offer for sale, or in any way  
 4 utter or circulate any counterfeit or imitation thereof; or who  
 5 shall keep or ~~have-in-his-possession~~ possess, with intent that \*  
 6 the same shall be sold or disposed of, any product of labor to  
 7 or upon which any such counterfeit or imitation is attached,  
 8 affixed, or impressed; or who shall knowingly sell or dispose of  
 9 any product of labor contained in any box, case, can, or package  
 10 to or upon which any such counterfeit or imitation is attached,  
 11 affixed, or impressed; or who shall ~~have-in-his-possession~~ \*  
 12 possess, with intent that the same shall be sold or disposed of, \*  
 13 any product of labor in any box, case, can, or package to which  
 14 or upon which any such counterfeit or imitation is attached,  
 15 affixed, or impressed, shall be punished by imprisonment in the  
 16 county jail for not more than three months, or by a fine of not  
 17 more than \$100.

333\*#44S

18 333.44 FRAUDULENT REGISTRATION OR USE; PENALTY.  
 19 ~~Every-person~~ Persons who shall, for ~~himself~~ themselves, or \*  
 20 on behalf of any other person, association, or union, procure  
 21 the filing of any label, trademark, term, design, device, or  
 22 form of advertisement with such secretary under the foregoing  
 23 provisions by any fraudulent means, and every person who shall  
 24 use the name or seal of any such person, association, or union,  
 25 or officer thereof, in or with reference to the sales of goods  
 26 or products of labor, not being authorized to use the same,  
 27 shall be guilty of a misdemeanor.

334\*#02S

28 334.02 USURIOUS INTEREST; RECOVERY.  
 29 Every person who for any such loan or forbearance shall  
 30 have paid or delivered any greater sum or value than in section  
 31 334.01 allowed to be received may, ~~by-himself-or-his~~ personally \*  
 32 or through personal representatives, recover in an action \*  
 33 against the person who shall have received the same, or ~~his~~ the \*  
 34 receiver's personal representatives, the full amount of interest \*  
 35 or premium so paid, with costs, if action is brought within two  
 36 years after such payment or delivery. This section does not  
 37 apply when the loan or forbearance is made by a lender and the  
 38 lender is liable for the penalty provided in section 48.196 or  
 39 chapter 56 in connection with the loan or forbearance. For  
 40 purposes of this section, the term "lender" means a bank or  
 41 savings bank organized under the laws of this state, a federally  
 42 chartered savings and loan association, a savings association  
 43 organized under chapter 51A, a federally chartered credit union,  
 44 a credit union organized under chapter 52, an industrial loan  
 45 and thrift company organized under chapter 53, a licensed lender  
 46 under chapter 56, or a mortgagee or lender approved or certified  
 47 by the secretary of housing and urban development or approved or  
 48 certified by the administrator of veterans affairs.

334\*#03S

49 334.03 USURIOUS CONTRACTS INVALID; EXCEPTIONS.  
 50 All bonds, bills, notes, mortgages, and all other contracts  
 51 and securities, and all deposits of goods, or any other thing,  
 52 whereupon or whereby there shall be reserved, secured, or taken  
 53 any greater sum or value for the loan or forbearance of any  
 54 money, goods, or things in action than prescribed, except such  
 55 instruments which are taken or received in accordance with and  
 56 in reliance upon the provisions of any statute, shall be void  
 57 except as to a holder in due course. No merely clerical error  
 58 in the computation of interest, made without intent to avoid the  
 59 provisions of this chapter, shall constitute usury. Interest at  
 60 the rate of one-twelfth of eight percent for every 30 days shall  
 61 not be construed to exceed eight percent per annum; nor shall  
 62 the payment of interest in advance of one year, or any less  
 63 time, at a rate not exceeding eight percent per annum constitute  
 64 usury; and nothing herein shall prevent the purchase of  
 65 negotiable mercantile paper, usurious or otherwise, for a  
 66 valuable consideration, by a purchaser without notice, at any  
 67 price before the maturity of the same, when there has been no  
 68 intent to evade the provisions of this chapter, or where such  
 69 purchase has not been a part of the original usurious  
 70 transactions; but where the original holder of a usurious note  
 71 sells the same to an innocent purchaser, the maker thereof, or  
 72 ~~his~~ the maker's representatives, may recover back from the \*  
 73 original holder the amount of principal and interest paid ~~by-him~~ \*

1 on the note. This section does not apply when the loan or  
 2 forbearance is made by a lender and the lender is liable for the  
 3 penalty provided in section 48.196 or chapter 56 in connection  
 4 with the loan or forbearance. For purposes of this section, the  
 5 term "lender" means a bank or savings bank organized under the  
 6 laws of this state, a federally chartered savings and loan  
 7 association, a savings association organized under chapter 51A,  
 8 a federally chartered credit union, a credit union organized  
 9 under chapter 52, an industrial loan and thrift company  
 10 organized under chapter 53, a licensed lender under chapter 56,  
 11 or a mortgagee or lender approved or certified by the secretary  
 12 of housing and urban development or approved or certified by the  
 13 administrator of veterans affairs.

334\*#04S

14 334.04 OFFENDERS TO ANSWER ON OATH.

15 Every person offending against the provisions of this  
 16 chapter shall be compelled to answer, on oath, the complaint in  
 17 any action brought against ~~him~~ that person in the district court \*  
 18 of the proper county for the discovery of any sum of money,  
 19 goods, or things in action so taken, accepted, or received in  
 20 violation of any of the foregoing provisions.

334\*#17S

21 334.17 PRIOR OPEN END CREDIT SALES AND AGREEMENTS  
 22 CONFIRMED.

23 Open end consumer credit sales plans, agreements and  
 24 arrangements and sales pursuant thereto made prior to August 1,  
 25 1971, shall be enforceable by the buyer and the seller, the  
 26 defense of usury shall not be interposed in any action thereon  
 27 and no action shall be maintained in any court to recover moneys  
 28 paid thereunder; provided the finance charge to be imposed,  
 29 charged and collected on or after August 1, 1971, with respect  
 30 to any open end consumer credit sales, plans, agreements and  
 31 arrangements, and sales pursuant thereto whether made before or  
 32 after August 1, 1971, shall not exceed the finance charge  
 33 provided in section 334.16, subdivision 1, clause (b). Nothing  
 34 contained in sections 334.16 to 334.18 shall be construed to  
 35 affect any constitutionally protected vested right or any action  
 36 by an individual ~~for-himself~~ acting personally, and not as a \*  
 37 representative of a class, for recovery of interest or finance  
 38 charges paid and no class action shall be maintained therefor.

336#01-102

39 336.1-102 PURPOSES; RULES OF CONSTRUCTION; VARIATION BY  
 40 AGREEMENT.

41 (1) This chapter shall be liberally construed and applied  
 42 to promote its underlying purposes and policies.

43 (2) Underlying purposes and policies of this chapter are

44 (a) to simplify, clarify, and modernize the law governing  
 45 commercial transactions;

46 (b) to permit the continued expansion of commercial  
 47 practices through custom, usage, and agreement of the parties;

48 (c) to make uniform the law among the various jurisdictions.

49 (3) The effect of provisions of this chapter may be varied  
 50 by agreement, except as otherwise provided in this chapter and  
 51 except that the obligations of good faith, diligence,  
 52 reasonableness, and care prescribed by this chapter may not be  
 53 disclaimed by agreement but the parties may by agreement  
 54 determine the standards by which the performance of such  
 55 obligations is to be measured if such standards are not  
 56 manifestly unreasonable.

57 (4) The presence in certain provisions of this chapter of  
 58 the words "unless otherwise agreed" or words of similar import  
 59 does not imply that the effect of other provisions may not be  
 60 varied by agreement under subsection (3).

61 (5) In this chapter unless the context otherwise requires

62 (a) words in the singular number include the plural, and in  
 63 the plural include the singular;

64 (b) words of ~~the-masculine~~ one gender include the ~~feminine~~ \*  
 65 ~~and-the-neuter~~ other genders, and when the sense so indicates \*  
 66 words of the neuter gender may refer to any gender.

67 (6) Nothing in this chapter shall be construed to authorize  
 68 the establishment of branch offices for banks, savings banks,  
 69 trust companies, savings and loan associations, or building and  
 70 loan associations.

336#01-201

71 336.1-201 GENERAL DEFINITIONS.

72 Subject to additional definitions contained in the

1 subsequent articles of this chapter which are applicable to  
2 specific articles or parts thereof, and unless the context  
3 otherwise requires, in this chapter:

4 (1) "Action" in the sense of a judicial proceeding includes  
5 recoupment, counterclaim, setoff, suit in equity and any other  
6 proceedings in which rights are determined.

7 (2) "Aggrieved party" means a party entitled to resort to a  
8 remedy.

9 (3) "Agreement" means the bargain of the parties in fact as  
10 found in their language or by implication from other  
11 circumstances including course of dealing or usage of trade or  
12 course of performance as provided in this chapter (sections  
13 336.1-205 and 336.2-208). Whether an agreement has legal  
14 consequences is determined by the provisions of this chapter, if  
15 applicable; otherwise by the law of contracts (section  
16 336.1-103). (Compare "Contract.")

17 (4) "Bank" means any person engaged in the business of  
18 banking.

19 (5) "Bearer" means the person in possession of an  
20 instrument, document of title, or certificated security payable  
21 to bearer or endorsed in blank.

22 (6) "Bill of lading" means a document evidencing the  
23 receipt of goods for shipment issued by a person engaged in the  
24 business of transporting or forwarding goods, and includes an  
25 airbill. "Airbill" means a document serving for air  
26 transportation as a bill of lading does for marine or rail  
27 transportation, and includes an air consignment note or air  
28 waybill.

29 (7) "Branch" includes a separately incorporated foreign  
30 branch of a bank.

31 (8) "Burden of establishing" a fact means the burden of  
32 persuading the triers of fact that the existence of the fact is  
33 more probable than its nonexistence.

34 (9) "Buyer in ordinary course of business" means a person  
35 who in good faith and without knowledge that the sale to him  
36 that person is in violation of the ownership rights or security  
37 interest of a third party in the goods buys in ordinary course  
38 from a person in the business of selling goods of that kind but  
39 does not include a pawnbroker. All persons who sell minerals or  
40 the like (including oil and gas) at wellhead or minehead shall  
41 be deemed to be persons in the business of selling goods of that  
42 kind. "Buying" may be for cash or by exchange of other property  
43 or on secured or unsecured credit and includes receiving goods  
44 or documents of title under a preexisting contract for sale but  
45 does not include a transfer in bulk or as security for or in  
46 total or partial satisfaction of a money debt.

47 (10) "Conspicuous": A term or clause is conspicuous when  
48 it is so written that a reasonable person against whom it is to  
49 operate ought to have noticed it. A printing heading in  
50 capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous.  
51 Language in the body of a form is "conspicuous" if it is in  
52 larger or other contrasting type or color. But in a telegram  
53 any stated term is "conspicuous". Whether a term or clause is  
54 "conspicuous" or not is for decision by the court.

55 (11) "Contract" means the total legal obligation which  
56 results from the parties' agreement as affected by this chapter  
57 and any other applicable rules of law. (Compare "Agreement.")

58 (12) "Creditor" includes a general creditor, a secured  
59 creditor, a lien creditor and any representative of creditors,  
60 including an assignee for the benefit of creditors, a trustee in  
61 bankruptcy, a receiver in equity and an executor or  
62 administrator of an insolvent debtor's or assignor's estate.

63 (13) "Defendant" includes a person in the position of  
64 defendant in a cross-action or counterclaim.

65 (14) "Delivery" with respect to instruments, documents of  
66 title, chattel paper, or certificated securities means voluntary  
67 transfer of possession.

68 (15) "Document of title" includes bill of lading, dock  
69 warrant, dock receipt, warehouse receipt or order for the  
70 delivery of goods, and also any other document which in the  
71 regular course of business or financing is treated as adequately  
72 evidencing that the person in possession of it is entitled to  
73 receive, hold and dispose of the document and the goods it  
74 covers. To be a document of title a document must purport to be  
75 issued by or addressed to a bailee and purport to cover goods in  
76 the bailee's possession which are either identified or are

1 fungible portions of an identified mass.

2 (16) "Fault" means wrongful act, omission or breach.

3 (17) "Fungible" with respect to goods or securities means  
4 goods or securities of which any unit is, by nature or usage of  
5 trade, the equivalent of any other like unit. Goods which are  
6 not fungible shall be deemed fungible for the purposes of this  
7 chapter to the extent that under a particular agreement or  
8 document unlike units are treated as equivalents.

9 (18) "Genuine" means free of forgery or counterfeiting.

10 (19) "Good faith" means honesty in fact in the conduct or  
11 transaction concerned.

12 (20) "Holder" means a person who is in possession of a  
13 document of title or an instrument or a certificated investment  
14 security drawn, issued, or endorsed to ~~him~~ that person or ~~his~~  
15 that person's order or to bearer or in blank. \*  
\*

16 (21) To "honor" is to pay or to accept and pay, or where a  
17 credit so engages to purchase or discount a draft complying with  
18 the terms of the credit.

19 (22) "Insolvency proceedings" includes any assignment for  
20 the benefit of creditors or other proceedings intended to  
21 liquidate or rehabilitate the estate of the person involved.

22 (23) A person is "insolvent" who either has ceased to pay  
23 ~~his~~ debts in the ordinary course of business or cannot pay ~~his~~  
24 the debts as they become due or is insolvent within the meaning  
25 of the federal bankruptcy law. \*

26 (24) "Money" means a medium of exchange authorized or  
27 adopted by a domestic or foreign government as a part of its  
28 currency.

29 (25) A person has "notice" of a fact when that person \*

30 (a) ~~he~~ has actual knowledge of it; or \*

31 (b) ~~he~~ has received a notice or notification of it; or \*

32 (c) from all the facts and circumstances known to ~~him~~ that  
33 person at the time in question, ~~he~~ has reason to know that it  
34 exists. \*

35 A person "knows" or has "knowledge" of a fact when ~~he~~ that  
36 person has actual knowledge of it. "Discover" or "learn" or a  
37 word or phrase of similar import refers to knowledge rather than  
38 to reason to know. The time and circumstances under which a  
39 notice or notification may cease to be effective are not  
40 determined by this chapter.

41 (26) A person "notifies" or "gives" a notice or  
42 notification to another by taking such steps as may be  
43 reasonably required to inform the other in ordinary course  
44 whether or not such other actually comes to know of it. A  
45 person "receives" a notice or notification when

46 (a) it comes to ~~his~~ that person's attention; or \*

47 (b) it is duly delivered at the place of business through  
48 which the contract was made or at any other place held out by  
49 ~~him~~ that person as the place for receipt of such communications. \*

50 (27) Notice, knowledge or a notice or notification received  
51 by an organization is effective for a particular transaction  
52 from the time when it is brought to the attention of the  
53 individual conducting that transaction, and in any event from  
54 the time when it would have been brought to ~~his~~ the individual's  
55 attention if the organization had exercised due diligence. An  
56 organization exercises due diligence if it maintains reasonable  
57 routines for communicating significant information to the person  
58 conducting the transaction and there is reasonable compliance  
59 with the routines. Due diligence does not require an individual  
60 acting for the organization to communicate information unless  
61 such communication is part of ~~his~~ regular duties or unless ~~he~~  
62 the individual has reason to know of the transaction and that  
63 the transaction would be materially affected by the information. \*

64 (28) "Organization" includes a corporation, government or  
65 governmental subdivision or agency, business trust, estate,  
66 trust, partnership or association, two or more persons having a  
67 joint or common interest, or any other legal or commercial  
68 entity.

69 (29) "Party," as distinct from "third party," means a  
70 person who has engaged, in a transaction or made an agreement  
71 within this chapter.

72 (30) "Person" includes an individual or an organization  
73 (see section 336.1-102).

74 (31) "Presumption" or "presumed" means that the trier of  
75 fact must find the existence of the fact presumed unless and  
76 until evidence is introduced which would support a finding of

1 its non-existence.

2 (32) "Purchase" includes taking by sale, discount,  
3 negotiation, mortgage, pledge, lien, issue or re-issue, gift or  
4 any other voluntary transaction creating an interest in property.

5 (33) "Purchaser" means a person who takes by purchase.

6 (34) "Remedy" means any remedial right to which an  
7 aggrieved party is entitled with or without resort to a tribunal.

8 (35) "Representative" includes an agent, an officer of a  
9 corporation or association, and a trustee, executor or  
10 administrator of an estate, or any other person empowered to act  
11 for another.

12 (36) "Rights" includes remedies.

13 (37) "Security interest" means an interest in personal  
14 property or fixtures which secures payment or performance of an  
15 obligation. The retention or reservation of title by a seller  
16 of goods notwithstanding shipment or delivery to the buyer  
17 (section 336.2-401) is limited in effect to a reservation of a  
18 "security interest". The term also includes any interest of a  
19 buyer of accounts or chattel paper which is subject to article  
20 9. The special property interest of a buyer of goods on  
21 identification of such goods to a contract for sale under  
22 section 336.2-401 is not a "security interest," but a buyer may  
23 also acquire a "security interest" by complying with article 9.  
24 Unless a lease or consignment is intended as security,  
25 reservation of title thereunder is not a "security interest" but  
26 a consignment is in any event subject to the provisions on  
27 consignment sales (section 336.2-326). Whether a lease is  
28 intended as security is to be determined by the facts of each  
29 case; however, (a) the inclusion of an option to purchase does  
30 not of itself make the lease one intended for security, and (b)  
31 an agreement that upon compliance with the terms of the lease  
32 the lessee shall become or has the option to become the owner of  
33 the property for no additional consideration or for a nominal  
34 consideration does make the lease one intended for security.

35 (38) "Send" in connection with any writing or notice means  
36 to deposit in the mail or deliver for transmission by any other  
37 usual means of communication with postage or cost of  
38 transmission provided for and properly addressed and in the case  
39 of an instrument to an address specified thereon or otherwise  
40 agreed, or if there be none to any address reasonable under the  
41 circumstances. The receipt of any writing or notice within the  
42 time at which it would have arrived if properly sent has the  
43 effect of a proper sending.

44 (39) "Signed" includes any symbol executed or adopted by a  
45 party with present intention to authenticate a writing.

46 (40) "Surety" includes guarantor.

47 (41) "Telegram" includes a message transmitted by radio,  
48 teletype, cable, any mechanical method of transmission, or the  
49 like.

50 (42) "Term" means that portion of an agreement which  
51 relates to a particular matter.

52 (43) "Unauthorized" signature or endorsement means one made  
53 without actual, implied or apparent authority and includes a  
54 forgery.

55 (44) "Value": Except as otherwise provided with respect to  
56 negotiable instruments and bank collections (sections 336.3-303,  
57 336.4-208 and 336.4-209) a person gives "value" for rights ~~if he~~ \*  
58 acquires by acquiring them \*

59 (a) in return for a binding commitment to extend credit or  
60 for the extension of immediately available credit whether or not  
61 drawn upon and whether or not a chargeback is provided for in  
62 the event of difficulties in collection; or

63 (b) as security for or in total or partial satisfaction of  
64 a preexisting claim; or

65 (c) by accepting delivery pursuant to a preexisting  
66 contract for purchase; or

67 (d) generally, in return for any consideration sufficient  
68 to support a simple contract.

69 (45) "Warehouse receipt" means a receipt issued by a person  
70 engaged in the business of storing goods for hire.

71 (46) "Written" or "writing" includes printing, typewriting  
72 or any other intentional reduction to tangible form.

336#01-205

73 336.1-205 COURSE OF DEALING AND USAGE OF TRADE.

74 (1) A course of dealing is a sequence of previous conduct  
75 between the parties to a particular transaction which is fairly

- 1 to be regarded as establishing a common basis of understanding  
 2 for interpreting their expressions and other conduct.
- 3 (2) A usage of trade is any practice or method of dealing  
 4 having such regularity of observance in a place, vocation or  
 5 trade as to justify an expectation that it will be observed with  
 6 respect to the transaction in question. The existence and scope  
 7 of such a usage are to be proved as facts. If it is established  
 8 that such a usage is embodied in a written trade code or similar  
 9 writing the interpretation of the writing is for the court.
- 10 (3) A course of dealing between parties and any usage of  
 11 trade in the vocation or trade in which they are engaged or of  
 12 which they are or should be aware give particular meaning to and  
 13 supplement or qualify terms of an agreement.
- 14 (4) The express terms of an agreement and an applicable  
 15 course of dealing or usage of trade shall be construed wherever  
 16 reasonable as consistent with each other; but when such  
 17 construction is unreasonable express terms control both course  
 18 of dealing and usage of trade and course of dealing controls  
 19 usage of trade.
- 20 (5) An applicable usage of trade in the place where any  
 21 part of performance is to occur shall be used in interpreting  
 22 the agreement as to that part of the performance.
- 23 (6) Evidence of a relevant usage of trade offered by one  
 24 party is not admissible unless and until he that party has given \*  
 25 the other party such notice as the court finds sufficient to  
 26 prevent unfair surprise to the latter.

336#01-206

27 336.1-206 STATUTE OF FRAUDS FOR KINDS OF PERSONAL  
 28 PROPERTY NOT OTHERWISE COVERED.

29 (1) Except in the cases described in subsection (2) of this  
 30 section a contract for the sale of personal property is not  
 31 enforceable by way of action or defense beyond \$5,000 in amount  
 32 or value of remedy unless there is some writing which indicates  
 33 that a contract for sale has been made between the parties at a  
 34 defined or stated price, reasonably identifies the subject  
 35 matter, and is signed by the party against whom enforcement is  
 36 sought or by his that party's authorized agent. \*

37 (2) Subsection (1) of this section does not apply to  
 38 contracts for the sale of goods (section 336.2-201) nor of  
 39 securities (section 336.8-319) nor to security agreements  
 40 (section 336.9-203).

336#01-208

41 336.1-208 OPTION TO ACCELERATE AT WILL.

42 A term providing that one party or his a successor in \*  
 43 interest may accelerate payment or performance or require \*  
 44 collateral or additional collateral "at will" or "when he-deems \*  
 45 himself the party claims to be insecure" or in words of similar \*  
 46 import shall be construed to mean that he the party shall have \*  
 47 power to do so only if-he-in with the good faith believes belief \*  
 48 that the prospect of payment or performance is impaired. The \*  
 49 burden of establishing lack of good faith is on the party  
 50 against whom the power has been exercised.

336#01-209

51 336.1-209 SUBORDINATED OBLIGATIONS.

52 An obligation may be issued as subordinated to payment of  
 53 another obligation of the person obligated, or a creditor may  
 54 subordinate his the creditor's right to payment of an obligation \*  
 55 by agreement with either the person obligated or another \*  
 56 creditor of the person obligated. Such a subordination does not \*  
 57 create a security interest as against either the common debtor \*  
 58 or a subordinated creditor. This section shall be construed as \*  
 59 declaring the law as it existed prior to the enactment of this  
 60 section and not as modifying it.

336#02-104

61 336.2-104 DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS";  
 62 "FINANCING AGENCY."

63 (1) "Merchant" means a person who deals in goods of the  
 64 kind or otherwise by his occupation holds himself out as having \*  
 65 knowledge or skill peculiar to the practices or goods involved \*  
 66 in the transaction or to whom such knowledge or skill may be \*  
 67 attributed by his employment of an agent or broker or other \*  
 68 intermediary who by his occupation holds himself out as having \*  
 69 such knowledge or skill.

70 (2) "Financing agency" means a bank, finance company or  
 71 other person who in the ordinary course of business makes  
 72 advances against goods or documents of title or who by

1 arrangement with either the seller or the buyer intervenes in  
 2 ordinary course to ~~the~~ or collect payment due or claimed under  
 3 the contract for sale, as by purchasing or paying the seller's  
 4 draft or making advances against it or by merely taking it for  
 5 collection whether or not documents of title accompany the  
 6 draft. "Financing agency" includes also a bank or other person  
 7 who similarly intervenes between persons who are in the position  
 8 of seller and buyer in respect to the goods (section 336.2-707).

9 (3) "Between merchants" means in any transaction with  
 10 respect to which both parties are chargeable with the knowledge  
 11 or skill of merchants.

336#02-201

12 336.2-201 FORMAL REQUIREMENTS; STATUTE OF FRAUDS.

13 (1) Except as otherwise provided in this section a contract  
 14 for the sale of goods for the price of \$500 or more is not  
 15 enforceable by way of action or defense unless there is some  
 16 writing sufficient to indicate that a contract for sale has been  
 17 made between the parties and signed by the party against whom  
 18 enforcement is sought or by ~~his~~ the party's authorized agent or  
 19 broker. A writing is not insufficient because it omits or  
 20 incorrectly states a term agreed upon but the contract is not  
 21 enforceable under this paragraph beyond the quantity of goods  
 22 shown in such writing.

23 (2) Between merchants if within a reasonable time a writing  
 24 in confirmation of the contract and sufficient against the  
 25 sender is received and the party receiving it has reason to know  
 26 its contents, it satisfies the requirements of subsection (1)  
 27 against such party unless written notice of objection to its  
 28 contents is given within ten days after it is received.

29 (3) A contract which does not satisfy the requirements of  
 30 subsection (1) but which is valid in other respects is  
 31 enforceable

32 (a) if the goods are to be specially manufactured for the  
 33 buyer and are not suitable for sale to others in the ordinary  
 34 course of the seller's business and the seller, before notice of  
 35 repudiation is received and under circumstances which reasonably  
 36 indicate that the goods are for the buyer, has made either a  
 37 substantial beginning of their manufacture or commitments for  
 38 their procurement; or

39 (b) if the party against whom enforcement is sought admits  
 40 in ~~his~~ pleading, testimony or otherwise in court that a contract  
 41 for sale was made, but the contract is not enforceable under  
 42 this provision beyond the quantity of goods admitted; or

43 (c) with respect to goods for which payment has been made  
 44 and accepted or which have been received and accepted (section  
 45 336.2-606).

336#02-210

46 336.2-210 DELEGATION OF PERFORMANCE; ASSIGNMENT OF  
 47 RIGHTS.

48 (1) A party may perform ~~his~~ a duty through a delegate  
 49 unless otherwise agreed or unless the other party has a  
 50 substantial interest in having ~~his~~ the original promisor perform  
 51 or control the acts required by the contract. No delegation of  
 52 performance relieves the party delegating of any duty to perform  
 53 or any liability for breach.

54 (2) Unless otherwise agreed all rights of either seller or  
 55 buyer can be assigned except where the assignment would  
 56 materially change the duty of the other party, or increase  
 57 materially the burden or risk imposed on ~~him~~ the other party by  
 58 ~~his~~ the contract, or impair materially ~~his~~ the other party's  
 59 chance of obtaining return performance. A right to damages for  
 60 breach of the whole contract or a right arising out of the  
 61 assignor's due performance of ~~his~~ the assignor's entire  
 62 obligation can be assigned despite agreement otherwise.

63 (3) Unless the circumstances indicate the contrary a  
 64 prohibition of assignment of "the contract" is to be construed  
 65 as barring only the delegation to the assignee of the assignor's  
 66 performance.

67 (4) An assignment of "the contract" or of "all my rights  
 68 under the contract" or an assignment in similar general terms is  
 69 an assignment of rights and unless the language or the  
 70 circumstances (as in an assignment for security) indicate the  
 71 contrary, it is a delegation of performance of the duties of the  
 72 assignor and its acceptance by the assignee constitutes a  
 73 promise by ~~him~~ the assignee to perform those duties. This  
 74 promise is enforceable by either the assignor or the other party

1 to the original contract.

2 (5) The other party may treat any assignment which  
3 delegates performance as creating reasonable grounds for  
4 insecurity and may without prejudice to his the rights of the \*  
5 other party against the assignor demand assurances from the \*  
6 assignee (section 336.2-609).

336#02-304

7 336.2-304 PRICE PAYABLE IN MONEY, GOODS, REALTY, OR  
8 OTHERWISE.

9 (1) The price can be made payable in money or otherwise.  
10 If it is payable in whole or in part in goods each party is a  
11 seller of the goods which he that party is to transfer. \*

12 (2) Even though all or part of the price is payable in an  
13 interest in realty the transfer of the goods and the seller's  
14 obligations with reference to them are subject to this article,  
15 but not the transfer of the interest in realty or the  
16 transferor's obligations in connection therewith.

336#02-305

17 336.2-305 OPEN PRICE TERM.

18 (1) The parties if they so intend can conclude a contract  
19 for sale even though the price is not settled. In such a case  
20 the price is a reasonable price at the time for delivery if

21 (a) nothing is said as to price; or

22 (b) the price is left to be agreed by the parties and they  
23 fail to agree; or

24 (c) the price is to be fixed in terms of some agreed market  
25 or other standard as set or recorded by a third person or agency  
26 and it is not so set or recorded.

27 (2) A price to be fixed by the seller or by the buyer means  
28 a price for him the fixer to fix in good faith. \*

29 (3) When a price left to be fixed otherwise than by  
30 agreement of the parties fails to be fixed through fault of one  
31 party the other may ~~at his option~~ either treat the contract as  
32 cancelled or himself fix a reasonable price. \*

33 (4) Where, however, the parties intend not to be bound  
34 unless the price be fixed or agreed and it is not fixed or  
35 agreed there is no contract. In such a case the buyer must  
36 return any goods already received or if unable so to do must pay  
37 their reasonable value at the time of delivery and the seller  
38 must return any portion of the price paid on account.

336#02-308

39 336.2-308 ABSENCE OF SPECIFIED PLACE FOR DELIVERY.

40 Unless otherwise agreed

41 (a) the place for delivery of goods is the seller's place  
42 of business or if ~~he has~~ there is none his, the seller's \*  
43 residence; but

44 (b) in a contract for sale of identified goods which to the  
45 knowledge of the parties at the time of contracting are in some  
46 other place, that place is the place for their delivery; and

47 (c) documents of title may be delivered through customary  
48 banking channels.

336#02-310

49 336.2-310 OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT;  
50 AUTHORITY TO SHIP UNDER RESERVATION.

51 Unless otherwise agreed

52 (a) payment is due at the time and place at which the buyer  
53 is to receive the goods even though the place of shipment is the  
54 place of delivery; and

55 (b) if the seller is authorized to send the goods he the \*  
56 seller may ship them under reservation, and may tender the \*  
57 documents of title, but the buyer may inspect the goods after  
58 their arrival before payment is due unless such inspection is  
59 inconsistent with the terms of the contract (section 336.2-513);  
60 and

61 (c) if delivery is authorized and made by way of documents  
62 of title otherwise than by subsection (b) then payment is due at  
63 the time and place at which the buyer is to receive the  
64 documents regardless of where the goods are to be received; and

65 (d) where the seller is required or authorized to ship the  
66 goods on credit the credit period runs from the time of shipment  
67 but postdating the invoice or delaying its dispatch will  
68 correspondingly delay the starting of the credit period.

336#02-311

69 336.2-311 OPTIONS AND COOPERATION RESPECTING PERFORMANCE.

70 (1) An agreement for sale which is otherwise sufficiently  
71 definite (subsection (3) of section 336.2-204) to be a contract



1 is not made invalid by the fact that it leaves particulars of  
2 performance to be specified by one of the parties. Any such  
3 specification must be made in good faith and within limits set  
4 by commercial reasonableness.

5 (2) Unless otherwise agreed specifications relating to  
6 assortment of the goods are at the buyer's option and except as  
7 otherwise provided in subsections (1) (c) and (3) of section  
8 336.2-319 specifications or arrangements relating to shipment  
9 are at the seller's option.

10 (3) Where such specification would materially affect the  
11 other party's performance but is not seasonably made or where  
12 one party's cooperation is necessary to the agreed performance  
13 of the other but is not seasonably forthcoming, the other party  
14 in addition to all other remedies

15 (a) is excused for any resulting delay in ~~his-own~~ \*  
16 performance; and

17 (b) may also either proceed to perform in any reasonable \*  
18 manner or after the time for a material part of ~~his-own the~~  
19 performance treat the failure to specify or to cooperate as a  
20 breach by failure to deliver or accept the goods.

336#02-312

21 336.2-312 WARRANTY OF TITLE AND AGAINST INFRINGEMENT;  
22 BUYER'S OBLIGATION AGAINST INFRINGEMENT.

23 (1) Subject to subsection (2) there is in a contract for  
24 sale a warranty by the seller that

25 (a) the title conveyed shall be good, and its transfer  
26 rightful; and

27 (b) the goods shall be delivered free from any security  
28 interest or other lien or encumbrance of which the buyer at the  
29 time of contracting has no knowledge.

30 (2) A warranty under subsection (1) will be excluded or  
31 modified only by specific language or by circumstances which  
32 give the buyer reason to know that the person selling does not  
33 ~~claim title-in-himself to be the titleholder or that-he-is~~ \*  
34 ~~purporting to sell be selling~~ only such right or title as he \*  
35 ~~the person selling~~ or a third person may have. \*

36 (3) Unless otherwise agreed a seller who is a merchant  
37 regularly dealing in goods of the kind warrants that the goods  
38 shall be delivered free of the rightful claim of any third  
39 person by way of infringement or the like but a buyer who  
40 furnishes specifications to the seller must hold the seller  
41 harmless against any such claim which arises out of compliance  
42 with the specifications.

336#02-313

43 336.2-313 EXPRESS WARRANTIES BY AFFIRMATION, PROMISE,  
44 DESCRIPTION, SAMPLE.

45 (1) Express warranties by the seller are created as follows:

46 (a) Any affirmation of fact or promise made by the seller  
47 to the buyer which relates to the goods and becomes part of the  
48 basis of the bargain creates an express warranty that the goods  
49 shall conform to the affirmation or promise.

50 (b) Any description of the goods which is made part of the  
51 basis of the bargain creates an express warranty that the goods  
52 shall conform to the description.

53 (c) Any sample or model which is made part of the basis of  
54 the bargain creates an express warranty that the whole of the  
55 goods shall conform to the sample or model.

56 (2) It is not necessary to the creation of an express  
57 warranty that the seller use formal words such as "warrant" or  
58 "guarantee" or that ~~he the seller~~ have a specific intention to \*  
59 make a warranty, but an affirmation merely of the value of the  
60 goods or a statement purporting to be merely the seller's  
61 opinion or commendation of the goods does not create a warranty.

336#02-316

62 336.2-316 EXCLUSION OR MODIFICATION OF WARRANTIES.

63 (1) Words or conduct relevant to the creation of an express  
64 warranty and words or conduct tending to negate or limit  
65 warranty shall be construed wherever reasonable as consistent  
66 with each other; but subject to the provisions of this article  
67 on parol or extrinsic evidence (section 336.2-202) negation or  
68 limitation is inoperative to the extent that such construction  
69 is unreasonable.

70 (2) Subject to subsection (3), to exclude or modify the  
71 implied warranty of merchantability or any part of it the  
72 language must mention merchantability and in case of a writing  
73 must be conspicuous, and to exclude or modify any implied

1 warranty of fitness the exclusion must be by a writing and  
 2 conspicuous. Language to exclude all implied warranties of  
 3 fitness is sufficient if it states, for example, that "There are  
 4 no warranties which extend beyond the description on the face  
 5 hereof."

6 (3) Notwithstanding subsection (2)

7 (a) unless the circumstances indicate otherwise, all  
 8 implied warranties are excluded by expressions like "as is,"  
 9 "with all faults" or other language which in common  
 10 understanding calls the buyer's attention to the exclusion of  
 11 warranties and makes plain that there is no implied warranty;  
 12 and

13 (b) when the buyer before entering into the contract has  
 14 examined the goods or the sample or model as fully as he desired \*  
 15 or has refused to examine the goods there is no implied warranty  
 16 with regard to defects which an examination ought in the  
 17 circumstances to have revealed ~~to him~~; and \*

18 (c) an implied warranty can also be excluded or modified by  
 19 course of dealing or course of performance or usage of trade.

20 (4) Remedies for breach of warranty can be limited in  
 21 accordance with the provisions of this article on liquidation or  
 22 limitation of damages and on contractual modification of remedy  
 23 (sections 336.2-718 and 336.2-719).

336#02-319

24 336.2-319 F.O.B. AND F.A.S. TERMS.

25 (1) Unless otherwise agreed the terms F.O.B. (which means  
 26 "free on board") at a named place, even though used only in  
 27 connection with the stated price, is a delivery term under which

28 (a) when the term is F.O.B. the place of shipment, the  
 29 seller must at that place ship the goods in the manner provided  
 30 in this article (section 336.2-504) and bear the expense and  
 31 risk of putting them into the possession of the carrier; or

32 (b) when the term is F.O.B. the place of destination, the  
 33 seller must at-his-own-expense pay for, and stand the risk  
 34 transport of, the transportation of the goods to that place and \*  
 35 there tender delivery of them in the manner provided in this \*  
 36 article (section 336.2-504);

37 (c) when under either (a) or (b) the term is also F.O.B.  
 38 vessel, car or other vehicle, the seller must in addition at-his \*  
 39 own-expense pay for, and stand the risk load of, the loading \*  
 40 of the goods on board. If the term is F.O.B. vessel the buyer \*  
 41 must name the vessel and in an appropriate case the seller must  
 42 comply with the provisions of this article on the form of bill  
 43 of lading (section 336.2-323).

44 (2) Unless otherwise agreed the term F.A.S. vessel (which  
 45 means "free alongside") at a named port, even though used only  
 46 in connection with the stated price, is a delivery term under  
 47 which the seller must

48 (a) at-his-own-expense pay for, and stand the risk deliver \*  
 49 of, the delivery of the goods alongside the vessel in the manner \*  
 50 usual in that port or on a dock designated and provided by the  
 51 buyer; and

52 (b) obtain and tender a receipt for the goods in exchange  
 53 for which the carrier is under a duty to issue a bill of lading.

54 (3) Unless otherwise agreed in any case falling within  
 55 subsection (1) (a) or (c) or subsection (2) the buyer must  
 56 seasonably give any needed instructions for making delivery,  
 57 including when the term is F.A.S. or F.O.B. the loading berth of  
 58 the vessel and in an appropriate case its name and sailing  
 59 date. The seller may treat the failure of needed instructions  
 60 as a failure of cooperation under this article (section  
 61 336.2-311). He-may The seller also at-his has the option to \*  
 62 move the goods in any reasonable manner preparatory to delivery  
 63 or shipment.

64 (4) Under the term F.O.B. vessel or F.A.S. unless otherwise  
 65 agreed the buyer must make payment against tender of the  
 66 required documents and the seller may not tender nor the buyer  
 67 demand delivery of the goods in substitution for the documents.

336#02-320

68 336.2-320 C.I.F. AND C. & F. TERMS.

69 (1) The term C.I.F. means that the price includes in a lump  
 70 sum the cost of the goods and the insurance and freight to the  
 71 named destination. The term C. & F. or C.F. means that the price  
 72 so includes cost and freight to the named destination.

73 (2) Unless otherwise agreed and even though used only in  
 74 connection with the stated price and destination, the term C.I.F.

1 destination or its equivalent requires the seller ~~at-his-own~~ \*  
2 ~~expense to pay for, and stand the risk to of~~ \*  
3 (a) ~~put~~ putting the goods into the possession of a carrier \*  
4 at the port for shipment and ~~obtain~~ obtaining a negotiable bill \*  
5 or bills of lading covering the entire transportation to the \*  
6 named destination; and \*  
7 (b) ~~load~~ loading the goods and ~~obtain~~ obtaining a receipt \*  
8 from the carrier (which may be contained in the bill of lading) \*  
9 showing that the freight has been paid or provided for; and \*  
10 (c) ~~obtain~~ obtaining a policy or certificate of insurance, \*  
11 including any war risk insurance, of a kind and on terms then \*  
12 current at the port of shipment in the usual amount, in the \*  
13 currency of the contract, shown to cover the same goods covered \*  
14 by the bill of lading and providing for payment of loss to the \*  
15 order of the buyer or for the account of whom it may concern; \*  
16 but the seller may add to the price the amount of the premium \*  
17 for any such war risk insurance; and \*  
18 (d) ~~prepare~~ preparing an invoice of the goods and ~~procure~~ \*  
19 procuring any other documents required to effect shipment or to \*  
20 comply with the contract; and \*  
21 (e) ~~forward~~ forwarding and ~~tender~~ tendering with commercial \*  
22 promptness all the documents in due form and with any \*  
23 endorsement necessary to perfect the buyer's rights. \*  
24 (3) Unless otherwise agreed the term C. & F. or its \*  
25 equivalent has the same effect and imposes upon the seller the \*  
26 same obligations and risks as a C.I.F. term except the \*  
27 obligation as to insurance. \*  
28 (4) Under the term C.I.F. or C. & F. unless otherwise agreed \*  
29 the buyer must make payment against tender of the required \*  
30 documents and the seller may not tender nor the buyer demand \*  
31 delivery of the goods in substitution for the documents. \*  
32 336#02-324 \*  
33 336.2-324 "NO ARRIVAL, NO SALE" TERM. \*  
34 Under a term "no arrival, no sale" or terms of like \*  
35 meaning, unless otherwise agreed, \*  
36 (a) the seller must properly ship conforming goods and if \*  
37 they arrive by any means ~~he~~ the seller must tender them on \*  
38 arrival but ~~he-assumes-no~~ does not assume any obligation that \*  
39 the goods will arrive unless ~~he~~ the seller has caused the \*  
40 non-arrival; and \*  
41 (b) where without fault of the seller the goods are in part \*  
42 lost or have so deteriorated as no longer to conform to the \*  
43 contract or arrive after the contract time, the buyer may \*  
44 proceed as if there had been casualty to identified goods \*  
45 (section 336.2-613). \*  
46 336#02-325 \*  
47 336.2-325 "LETTER OF CREDIT" TERM; "CONFIRMED CREDIT". \*  
48 (1) Failure of the buyer seasonably to furnish an agreed \*  
49 letter of credit is a breach of the contract for sale. \*  
50 (2) The delivery to seller of a proper letter of credit \*  
51 suspends the buyer's obligation to pay. If the letter of credit \*  
52 is dishonored, the seller may on seasonable notification to the \*  
53 buyer require payment directly from ~~him~~ the buyer. \*  
54 (3) Unless otherwise agreed the term "letter of credit" or \*  
55 "banker's credit" in a contract for sale means an irrevocable \*  
56 credit issued by a financing agency of good repute and, where \*  
57 the shipment is overseas, of good international repute. The \*  
58 term "confirmed credit" means that the credit must also carry \*  
59 the direct obligation of such an agency which does business in \*  
60 the seller's financial market. \*  
61 336#02-326 \*  
62 336.2-326 SALE ON APPROVAL AND SALE OR RETURN; \*  
63 CONSIGNMENT SALES AND RIGHTS OF CREDITORS. \*  
64 (1) Unless otherwise agreed, if delivered goods may be \*  
65 returned by the buyer even though they conform to the contract, \*  
66 the transaction is \*  
67 (a) a "sale on approval" if the goods are delivered \*  
68 primarily for use, and \*  
69 (b) a "sale or return" if the goods are delivered primarily \*  
70 for resale. \*  
71 (2) Except as provided in subsection (3), goods held on \*  
72 approval are not subject to the claims of the buyer's creditors \*  
73 until acceptance; goods held on sale or return are subject to \*  
74 such claims while in the buyer's possession. \*  
75 (3) Where goods are delivered to a person for sale and such \*  
76 person maintains a place of business ~~at-which-he-deals~~ dealing \*

1 in goods of the kind involved, under a name other than the name  
 2 of the person making delivery, then with respect to claims of  
 3 creditors of the person conducting the business the goods are  
 4 deemed to be on sale or return. The provisions of this  
 5 subsection are applicable even though an agreement purports to  
 6 reserve title to the person making delivery until payment or  
 7 resale or uses such words as "on consignment" or "on  
 8 memorandum." However, this subsection is not applicable if the  
 9 person making delivery

10 (a) complies with an applicable law providing for a  
 11 consignor's interest or the like to be evidenced by a sign, or

12 (b) establishes that the person conducting the business is  
 13 generally known by ~~his~~ the person's creditors to be \*

14 substantially engaged in selling the goods of others, or  
 15 (c) complies with the filing provisions of the article on  
 16 secured transactions (article 9).

17 (4) Any "or return" term of a contract for sale is to be  
 18 treated as a separate contract for sale within the statute of  
 19 frauds section of this article (section 336.2-201) and as  
 20 contradicting the sale aspect of the contract within the  
 21 provisions of this article on parol or extrinsic evidence  
 22 (section 336.2-202).

336#02-328

23 336.2-328 SALE BY AUCTION.

24 (1) In a sale by auction if goods are put up in lots each  
 25 lot is the subject of a separate sale.

26 (2) A sale by auction is complete when the auctioneer so  
 27 announces by the fall of the hammer or in other customary  
 28 manner. Where a bid is made while the hammer is falling in  
 29 acceptance of a prior bid the auctioneer may ~~in-his-discretion~~ \*  
 30 reopen the bidding or declare the goods sold under the bid on  
 31 which the hammer was falling.

32 (3) Such a sale is with reserve unless the goods are in  
 33 explicit terms put up without reserve. In an auction with  
 34 reserve the auctioneer may withdraw the goods at any time ~~until~~ \*  
 35 ~~he-announces before announcing~~ completion of the sale. In an \*  
 36 auction without reserve, after the auctioneer calls for bids on  
 37 an article or lot, that article or lot cannot be withdrawn  
 38 unless no bid is made within a reasonable time. In either case  
 39 a bidder may retract ~~his~~ a bid until the auctioneer's \*  
 40 announcement of completion of the sale, but a bidder's  
 41 retraction does not revive any previous bid.

42 (4) If the auctioneer knowingly receives a bid on the  
 43 seller's behalf or the seller makes or procures such a bid, and  
 44 notice has not been given that liberty for such bidding is  
 45 reserved, the buyer may ~~at-his-option~~ either avoid the sale or \*  
 46 take the goods at the price of the last good faith bid prior to  
 47 the completion of the sale. This subsection shall not apply to  
 48 any bid at a forced sale.

336#02-401

49 336.2-401 PASSING OF TITLE; RESERVATION FOR SECURITY;  
 50 LIMITED APPLICATION OF THIS SECTION.

51 Each provision of this article with regard to the rights,  
 52 obligations and remedies of the seller, the buyer, purchasers or  
 53 other third parties applies irrespective of title to the goods  
 54 except where the provision refers to such title. Insofar as  
 55 situations are not covered by the other provisions of this  
 56 article and matters concerning title become material the  
 57 following rules apply:

58 (1) Title to goods cannot pass under a contract for sale  
 59 prior to their identification to the contract (section  
 60 336.2-501), and unless otherwise explicitly agreed the buyer  
 61 acquires by their identification a special property as limited  
 62 by this chapter. Any retention or reservation by the seller of  
 63 the title (property) in goods shipped or delivered to the buyer  
 64 is limited in effect to a reservation of a security interest.  
 65 Subject to these provisions and to the provisions of the article  
 66 on secured transactions (article 9), title to goods passes from  
 67 the seller to the buyer in any manner and on any conditions  
 68 explicitly agreed on by the parties.

69 (2) Unless otherwise explicitly agreed title passes to the \*  
 70 buyer at the time and place at which the seller completes ~~his~~  
 71 performance with reference to the physical delivery of the  
 72 goods, despite any reservation of a security interest and even  
 73 though a document of title is to be delivered at a different  
 74 time or place; and in particular and despite any reservation of

1 a security interest in the bill of lading  
 2 (a) if the contract requires or authorizes the seller to  
 3 send the goods to the buyer but does not require him the seller \*  
 4 to deliver them at destination, title passes to the buyer at the  
 5 time and place of shipment; but  
 6 (b) if the contract requires delivery at destination, title  
 7 passes on tender there.  
 8 (3) Unless otherwise explicitly agreed where delivery is to  
 9 be made without moving the goods,  
 10 (a) if the seller is to deliver a document of title, title  
 11 passes at the time when and the place where he the seller \*  
 12 delivers such documents; or  
 13 (b) if the goods are at the time of contracting already  
 14 identified and no documents are to be delivered, title passes at  
 15 the time and place of contracting.  
 16 (4) A rejection or other refusal by the buyer to receive or  
 17 retain the goods, whether or not justified, or a justified  
 18 revocation of acceptance reverts title to the goods in the  
 19 seller. Such reversion occurs by operation of law and is not a  
 20 "sale."

336#02-402

21 336.2-402 RIGHTS OF SELLER'S CREDITORS AGAINST SOLD  
22 GOODS.

23 (1) Except as provided in subsections (2) and (3), rights  
 24 of unsecured creditors of the seller with respect to goods which  
 25 have been identified to a contract for sale are subject to the  
 26 buyer's rights to recover the goods under this article (sections  
 27 336.2-502 and 336.2-716).  
 28 (2) A creditor of the seller may treat a sale or an  
 29 identification of goods to a contract for sale as void if as  
 30 against him the creditor a retention of possession by the seller \*  
 31 is fraudulent under any rule of law of the state where the goods  
 32 are situated, except that retention of possession in good faith  
 33 and current course of trade by a merchant-seller for a  
 34 commercially reasonable time after a sale or identification is  
 35 not fraudulent.  
 36 (3) Nothing in this article shall be deemed to impair the  
 37 rights of creditors of the seller  
 38 (a) under the provisions of the article on secured  
 39 transactions (article 9); or  
 40 (b) where identification to the contract or delivery is  
 41 made not in current course of trade but in satisfaction of or as  
 42 security for a preexisting claim for money, security or the like  
 43 and is made under circumstances which under any rule of law of  
 44 the state where the goods are situated would apart from this  
 45 article constitute the transaction a fraudulent transfer or  
 46 voidable preference.

336#02-403

47 336.2-403 POWER TO TRANSFER; GOOD FAITH PURCHASE OF  
48 GOODS; "ENTRUSTING".

49 (1) A purchaser of goods acquires all title which his the \*  
 50 purchaser's transferor had or had power to transfer except that \*  
 51 a purchaser of a limited interest acquires rights only to the  
 52 extent of the interest purchased. A person with voidable title  
 53 has power to transfer a good title to a good faith purchaser for  
 54 value. When goods have been delivered under a transaction of  
 55 purchase the purchaser has such power even though  
 56 (a) the transferor was deceived as to the identity of the  
 57 purchaser, or  
 58 (b) the delivery was in exchange for a check which is later  
 59 dishonored, or  
 60 (c) it was agreed that the transaction was to be a "cash  
 61 sale," or  
 62 (d) the delivery was procured through fraud punishable as  
 63 larcenous under the criminal law.  
 64 (2) Any entrusting of possession of goods to a merchant who  
 65 deals in goods of that kind gives him the merchant power to \*  
 66 transfer all rights of the entruster to a buyer in ordinary  
 67 course of business.  
 68 (3) "Entrusting" includes any delivery and any acquiescence  
 69 in retention of possession regardless of any condition expressed  
 70 between the parties to the delivery or acquiescence and  
 71 regardless of whether the procurement of the entrusting or the  
 72 possessor's disposition of the goods have been such as to be  
 73 larcenous under the criminal law.  
 74 (4) The rights of other purchasers of goods and of lien

1 creditors are governed by the articles on secured transactions  
2 (article 9), bulk transfers (article 6) and documents of title  
3 (article 7).

336#02-501

4 336.2-501 INSURABLE INTEREST IN GOODS; MANNER OF  
5 IDENTIFICATION OF GOODS.

6 (1) The buyer obtains a special property and an insurable  
7 interest in goods by identification of existing goods as goods  
8 to which the contract refers even though the goods so identified  
9 are nonconforming and ~~he~~ the buyer has an option to return or \*  
10 reject them. Such identification can be made at any time and in  
11 any manner explicitly agreed to by the parties. In the absence  
12 of explicit agreement identification occurs

13 (a) when the contract is made if it is for the sale of  
14 goods already existing and identified;

15 (b) if the contract is for the sale of future goods other  
16 than those described in paragraph (c), when goods are shipped,  
17 marked or otherwise designated by the seller as goods to which  
18 the contract refers;

19 (c) when the crops are planted or otherwise become growing  
20 crops or the young are conceived if the contract is for the sale  
21 of unborn young to be born within 12 months after contracting or  
22 for the sale of crops to be harvested within 12 months or the  
23 next normal harvest season after contracting whichever is longer.

24 (2) The seller retains an insurable interest in goods so  
25 long as title to or any security interest in the goods remains  
26 in ~~him~~ the seller and where the identification is by the seller \*  
27 alone ~~he~~ the seller may until default or insolvency or \*  
28 notification to the buyer that the identification is final  
29 substitute other goods for those identified.

30 (3) Nothing in this section impairs any insurable interest  
31 recognized under any other statute or rule of law.

336#02-502

32 336.2-502 BUYER'S RIGHT TO GOODS ON SELLER'S INSOLVENCY.

33 (1) Subject to subsection (2) and even though the goods  
34 have not been shipped a buyer who has paid a part or all of the  
35 price of goods in which ~~he~~ the buyer has a special property \*  
36 under the provisions of the immediately preceding section may on  
37 making and keeping good a tender of any unpaid portion of their  
38 price recover them from the seller if the seller becomes  
39 insolvent within ten days after receipt of the first installment  
40 on their price.

41 (2) If the identification creating ~~his~~ the special property \*  
42 has been made by the buyer ~~he~~, the buyer acquires the right to \*  
43 recover the goods only if they conform to the contract for sale.

336#02-503

44 336.2-503 MANNER OF SELLER'S TENDER OF DELIVERY.

45 (1) Tender of delivery requires that the seller put and  
46 hold conforming goods at the buyer's disposition and give the  
47 buyer any notification reasonably necessary to enable ~~him~~ the \*  
48 buyer to take delivery. The manner, time and place for tender \*  
49 are determined by the agreement and this article, and in  
50 particular

51 (a) tender must be at a reasonable hour, and if it is of  
52 goods they must be kept available for the period reasonably  
53 necessary to enable the buyer to take possession; but

54 (b) unless otherwise agreed the buyer must furnish  
55 facilities reasonably suited to the receipt of the goods.

56 (2) Where the case is within the next section respecting  
57 shipment tender requires that the seller comply with its  
58 provisions.

59 (3) Where the seller is required to deliver at a particular  
60 destination tender requires that ~~he~~ the seller comply with \*  
61 subsection (1) and also in any appropriate case tender documents  
62 as described in subsections (4) and (5) of this section.

63 (4) Where goods are in the possession of a bailee and are  
64 to be delivered without being moved

65 (a) tender requires that the seller either tender a  
66 negotiable document of title covering such goods or procure  
67 acknowledgment by the bailee of the buyer's right to possession  
68 of the goods; but

69 (b) tender to the buyer of a non-negotiable document of  
70 title or of a written direction to the bailee to deliver is  
71 sufficient tender unless the buyer seasonably objects, and  
72 receipt by the bailee of notification of the buyer's rights  
73 fixes those rights as against the bailee and all third persons;

1 but risk of loss of the goods and of any failure by the bailee  
 2 to honor the non-negotiable document of title or to obey the  
 3 direction remains on the seller until the buyer has had a  
 4 reasonable time to present the document or direction, and a  
 5 refusal by the bailee to honor the document or to obey the  
 6 direction defeats the tender.

7 (5) Where the contract requires the seller to deliver  
 8 documents

9 (a) ~~he~~ the seller must tender all such documents in correct \*  
 10 form, except as provided in this article with respect to bills  
 11 of lading in a set (subsection (2) of section 336.2-323); and \*

12 (b) tender through customary banking channels is sufficient  
 13 and dishonor of a draft accompanying the documents constitutes  
 14 nonacceptance or rejection.

336#02-504

15 336.2-504 SHIPMENT BY SELLER.

16 Where the seller is required or authorized to send the  
 17 goods to the buyer and the contract does not require ~~him~~ the \*  
 18 seller to deliver them at a particular destination, then unless \*  
 19 otherwise agreed ~~he~~ the seller must \*

20 (a) put the goods in the possession of such a carrier and  
 21 make such a contract for their transportation as may be  
 22 reasonable having regard to the nature of the goods and other  
 23 circumstances of the case; and

24 (b) obtain and promptly deliver or tender in due form any  
 25 document necessary to enable the buyer to obtain possession of  
 26 the goods or otherwise required by the agreement or by usage of  
 27 trade; and

28 (c) promptly notify the buyer of the shipment.

29 Failure to notify the buyer under paragraph (c) or to make  
 30 a proper contract under paragraph (a) is a ground for rejection  
 31 only if material delay or loss ensues.

336#02-505

32 336.2-505 SELLER'S SHIPMENT UNDER RESERVATION.

33 (1) Where the seller has identified goods to the contract  
 34 by or before shipment:

35 (a) ~~His~~ The seller's procurement of a negotiable bill of \*  
 36 lading to ~~his~~ the seller's own order or otherwise reserves in \*  
 37 ~~him~~ the seller a security interest in the goods. ~~His~~ The \*  
 38 seller's procurement of the bill to the order of a financing \*  
 39 agency or of the buyer indicates in addition only the seller's  
 40 expectation of transferring that interest to the person named.

41 (b) A non-negotiable bill of lading to ~~himself~~ the seller \*  
 42 or ~~his~~ the seller's nominee reserves possession of the goods as \*  
 43 security but except in a case of conditional delivery  
 44 (subsection (2) of section 336.2-507) a non-negotiable bill of  
 45 lading naming the buyer as a consignee reserves no security  
 46 interest even though the seller retains possession of the bill  
 47 of lading.

48 (2) When shipment by the seller with reservation of a  
 49 security interest is in violation of the contract for sale it  
 50 constitutes an improper contract for transportation within the  
 51 preceding section but impairs neither the rights given to the  
 52 buyer by shipment and identification of the goods to the  
 53 contract nor the seller's powers as a holder of a negotiable  
 54 document.

336#02-507

55 336.2-507 EFFECT OF SELLER'S TENDER; DELIVERY ON  
 56 CONDITION.

57 (1) Tender of delivery is a condition to the buyer's duty  
 58 to accept the goods and, unless otherwise agreed, to ~~his~~ the \*  
 59 buyer's duty to pay for them. Tender entitles the seller to \*  
 60 acceptance of the goods and to payment according to the contract.

61 (2) Where payment is due and demanded on the delivery to  
 62 the buyer of goods or documents of title, ~~his~~ the buyer's right \*  
 63 as against the seller to retain or dispose of them is \*  
 64 conditional upon ~~his~~ the buyer's making the payment due. \*

336#02-508

65 336.2-508 CURE BY SELLER OF IMPROPER TENDER OR DELIVERY;  
 66 REPLACEMENT.

67 (1) Where any tender or delivery by the seller is rejected  
 68 because nonconforming and the time for performance has not yet  
 69 expired, the seller may seasonably notify the buyer of ~~his~~ the \*  
 70 seller's intention to cure and may then within the contract time \*  
 71 make a conforming delivery.

72 (2) Where the buyer rejects a nonconforming tender which

1 the seller had reasonable grounds to believe would be acceptable  
 2 with or without money allowance the seller may ~~if he~~ on \*  
 3 ~~seasonably notifies~~ notifying the buyer have a further \*  
 4 reasonable time to substitute a conforming tender.

336#02-509

5 336.2-509 RISK OF LOSS IN THE ABSENCE OF BREACH.

6 (1) Where the contract requires or authorizes the seller to  
 7 ship the goods by carrier

8 (a) if it does not require ~~him~~ the seller to deliver them \*  
 9 at a particular destination, the risk of loss passes to the  
 10 buyer when the goods are duly delivered to the carrier even  
 11 though the shipment is under reservation (section 336.2-505);  
 12 but

13 (b) if it does require ~~him~~ the seller to deliver them at a \*  
 14 particular destination and the goods are there duly tendered  
 15 while in the possession of the carrier, the risk of loss passes  
 16 to the buyer when the goods are there duly so tendered as to  
 17 enable the buyer to take delivery.

18 (2) Where the goods are held by a bailee to be delivered  
 19 without being moved, the risk of loss passes to the buyer

20 (a) on ~~his~~ the buyer's receipt of a negotiable document of \*  
 21 title covering the goods; or

22 (b) on acknowledgment by the bailee of the buyer's right to  
 23 possession of the goods; or

24 (c) after ~~his~~ the buyer's receipt of a non-negotiable \*  
 25 document of title or other written direction to deliver, as  
 26 provided in subsection (4) (b) of section 336.2-503.

27 (3) In any case not within subsection (1) or (2), the risk  
 28 of loss passes to the buyer on ~~his~~ receipt of the goods if the \*  
 29 seller is a merchant; otherwise the risk passes to the buyer on  
 30 tender of delivery.

31 (4) The provisions of this section are subject to contrary  
 32 agreement of the parties and to the provisions of this article  
 33 on sale on approval (section 336.2-327) and on effect of breach  
 34 on risk of loss (section 336.2-510).

336#02-510

35 336.2-510 EFFECT OF BREACH ON RISK OF LOSS.

36 (1) Where a tender or delivery of goods so fails to conform  
 37 to the contract as to give a right of rejection the risk of  
 38 their loss remains on the seller until cure or acceptance.

39 (2) Where the buyer rightfully revokes acceptance ~~he~~ the \*  
 40 buyer may to the extent of any deficiency in ~~his~~ the buyer's \*  
 41 effective insurance coverage treat the risk of loss as having  
 42 rested on the seller from the beginning.

43 (3) Where the buyer as to conforming goods already  
 44 identified to the contract for sale repudiates or is otherwise \*  
 45 in breach before risk of their loss has passed to ~~him~~ the buyer, \*  
 46 the seller may to the extent of any deficiency in ~~his~~ the \*  
 47 seller's effective insurance coverage treat the risk of loss as \*  
 48 resting on the buyer for a commercially reasonable time.

336#02-512

49 336.2-512 PAYMENT BY BUYER BEFORE INSPECTION.

50 (1) Where the contract requires payment before inspection  
 51 nonconformity of the goods does not excuse the buyer from so  
 52 making payment unless

53 (a) the nonconformity appears without inspection; or

54 (b) despite tender of the required documents the  
 55 circumstances would justify injunction against honor under the  
 56 provisions of this chapter (section 336.5-114).

57 (2) Payment pursuant to subsection (1) does not constitute  
 58 an acceptance of goods or impair the buyer's right to inspect or  
 59 any of ~~his~~ the buyer's remedies. \*

336#02-602

60 336.2-602 MANNER AND EFFECT OF RIGHTFUL REJECTION.

61 (1) Rejection of goods must be within a reasonable time  
 62 after their delivery or tender. It is ineffective unless the  
 63 buyer seasonably notifies the seller.

64 (2) Subject to the provisions of the two following sections  
 65 on rejected goods (sections 336.2-603 and 336.2-604),

66 (a) after rejection, any exercise of ownership by the buyer  
 67 with respect to any commercial unit is wrongful as against the  
 68 seller; and

69 (b) if the buyer has before rejection taken physical  
 70 possession of goods in which ~~he~~ the buyer does not have a \*  
 71 security interest under the provisions of this article

72 (subsection (3) of section 336.2-711), ~~he~~ the buyer is under a \*



1 duty after rejection to hold them with reasonable care at the  
2 seller's disposition for a time sufficient to permit the seller  
3 to remove them; but

4 (c) the buyer has no further obligations with regard to  
5 goods rightfully rejected.

6 (3) The seller's rights with respect to goods wrongfully  
7 rejected are governed by the provisions of this article on  
8 seller's remedies in general (section 336.2-703).

336#02-603

9 336.2-603 MERCHANT BUYER'S DUTIES AS TO RIGHTFULLY  
10 REJECTED GOODS.

11 (1) Subject to any security interest in the buyer  
12 (subsection (3) of section 336.2-711), when the seller has no  
13 agent or place of business at the market of rejection a merchant  
14 buyer is under a duty after rejection of goods in ~~his~~ the  
15 merchant buyer's possession or control to follow any reasonable \*  
16 instructions received from the seller with respect to the goods \*  
17 and in the absence of such instructions to make reasonable  
18 efforts to sell them for the seller's account if they are  
19 perishable or threaten to decline in value speedily.  
20 Instructions are not reasonable if on demand indemnity for  
21 expenses is not forthcoming.

22 (2) When the buyer sells goods under subsection (1), ~~he~~ the \*  
23 buyer is entitled to reimbursement from the seller or out of the \*  
24 proceeds for reasonable expenses of caring for and selling them,  
25 and if the expenses include no selling commission then to such  
26 commission as is usual in the trade or if there is none to a  
27 reasonable sum not exceeding ten percent on the gross proceeds.

28 (3) In complying with this section the buyer is held only  
29 to good faith and good faith conduct hereunder is neither  
30 acceptance nor conversion nor the basis of an action for damages.

336#02-604

31 336.2-604 BUYER'S OPTIONS AS TO SALVAGE OF RIGHTFULLY  
32 REJECTED GOODS.

33 Subject to the provisions of the immediately preceding  
34 section on perishables if the seller gives no instructions  
35 within a reasonable time after notification of rejection the  
36 buyer may store the rejected goods for the seller's account or  
37 reship them to ~~him~~ the seller or resell them for the seller's \*  
38 account with reimbursement as provided in the preceding  
39 section. Such action is not acceptance or conversion.

336#02-605

40 336.2-605 WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO  
41 PARTICULARIZE.

42 (1) The buyer's failure to state in connection with  
43 rejection a particular defect which is ascertainable by  
44 reasonable inspection precludes ~~him~~ the buyer from relying on \*  
45 the unstated defect to justify rejection or to establish breach

46 (a) where the seller could have cured it if stated  
47 seasonably; or

48 (b) between merchants when the seller has after rejection  
49 made a request in writing for a full and final written statement  
50 of all defects on which the buyer proposes to rely.

51 (2) Payment against documents made without reservation of  
52 rights precludes recovery of the payment for defects apparent on  
53 the face of the documents.

336#02-606

54 336.2-606 WHAT CONSTITUTES ACCEPTANCE OF GOODS.

55 (1) Acceptance of goods occurs when the buyer

56 (a) after a reasonable opportunity to inspect the goods  
57 signifies to the seller that the goods are conforming or that ~~he~~ \*  
58 the buyer will take or retain them in spite of their \*  
59 nonconformity; or

60 (b) fails to make an effective rejection (subsection (1) of  
61 section 336.2-602), but such acceptance does not occur until the  
62 buyer has had a reasonable opportunity to inspect them; or

63 (c) does any act inconsistent with the seller's ownership;  
64 but if such act is wrongful as against the seller it is an  
65 acceptance only if ratified by ~~him~~ the seller. \*

66 (2) Acceptance of a part of any commercial unit is  
67 acceptance of that entire unit.

336#02-607

68 336.2-607 EFFECT OF ACCEPTANCE; NOTICE OF BREACH; BURDEN  
69 OF ESTABLISHING BREACH AFTER ACCEPTANCE; NOTICE OF CLAIM OR  
70 LITIGATION TO PERSON ANSWERABLE OVER.

71 (1) The buyer must pay at the contract rate for any goods

1 accepted.

2 (2) Acceptance of goods by the buyer precludes rejection of  
3 the goods accepted and if made with knowledge of a nonconformity  
4 cannot be revoked because of it unless the acceptance was on the  
5 reasonable assumption that the nonconformity would be seasonably  
6 cured but acceptance does not of itself impair any other remedy  
7 provided by this article for nonconformity.

8 (3) Where a tender has been accepted

9 (a) the buyer must within a reasonable time after ~~he~~ the \*  
10 buyer discovers or should have discovered any breach notify the \*  
11 seller of breach or be barred from any remedy; and

12 (b) if the claim is one for infringement or the like  
13 (subsection (3) of section 336.2-312) and the buyer is sued as a  
14 result of such a breach ~~he~~ the buyer must so notify the seller \*  
15 within a reasonable time after ~~he-receives~~ receiving notice of \*  
16 the litigation or be barred from any remedy over for liability  
17 established by the litigation.

18 (4) The burden is on the buyer to establish any breach with  
19 respect to the goods accepted.

20 (5) Where the buyer is sued for breach of a warranty or  
21 other obligation for which ~~his~~ the buyer's seller is answerable \*  
22 over

23 (a) ~~he~~ the buyer may give ~~his~~ that seller written notice of \*  
24 the litigation. If the notice states that the seller may come \*  
25 in and defend and that if the seller does not do so ~~he~~ the \*  
26 seller will be bound in any action against ~~him~~ the seller by ~~his~~ \*  
27 the buyer by any determination of fact common to the two \*  
28 litigations, then unless the seller after reasonable receipt of  
29 the notice does come in and defend ~~he~~ the seller is so bound. \*

30 (b) if the claim is one for infringement or the like  
31 (subsection (3) of section 336.2-312) the original seller may \*  
32 demand in writing that ~~his~~ the original seller's buyer turn over \*  
33 ~~to-him~~ control of the litigation including settlement or else be \*  
34 barred from any remedy over and if ~~he~~ the original seller also \*  
35 agrees to bear all expense and to satisfy any adverse judgment,  
36 then unless the buyer after reasonable receipt of the demand  
37 does turn over control the buyer is so barred.

38 (6) The provisions of subsections (3), (4) and (5) apply to  
39 any obligation of a buyer to hold the seller harmless against  
40 infringement or the like (subsection (3) of section 336.2-312).

336#02-608

41 336.2-608 REVOCATION OF ACCEPTANCE IN WHOLE OR IN PART.

42 (1) The buyer may revoke ~~his~~ an acceptance of a lot or \*  
43 commercial unit whose nonconformity substantially impairs its  
44 value to ~~him~~ the buyer if ~~he-has-accepted~~ it was accepted \*

45 (a) on the reasonable assumption that its nonconformity  
46 would be cured and it has not been seasonably cured; or

47 (b) without discovery of such nonconformity if ~~his~~ the \*  
48 acceptance was reasonably induced either by the difficulty of  
49 discovery before acceptance or by the seller's assurances.

50 (2) Revocation of acceptance must occur within a reasonable  
51 time after the buyer discovers or should have discovered the  
52 ground for it and before any substantial change in condition of  
53 the goods which is not caused by their own defects. It is not  
54 effective until the buyer notifies the seller of it.

55 (3) A buyer who so revokes has the same rights and duties  
56 with regard to the goods involved as if ~~he~~ the buyer had \*  
57 rejected them.

336#02-609

58 336.2-609 RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE.

59 (1) A contract for sale imposes an obligation on each party  
60 that the other's expectation of receiving due performance will  
61 not be impaired. When reasonable grounds for insecurity arise  
62 with respect to the performance of either party the other may in  
63 writing demand adequate assurance of due performance and until  
64 ~~he-receives~~ such assurance is received may if commercially \*  
65 reasonable suspend any performance for which ~~he~~ the person \*  
66 making the demand has not already received the agreed return. \*

67 (2) Between merchants the reasonableness of grounds for  
68 insecurity and the adequacy of any assurance offered shall be  
69 determined according to commercial standards.

70 (3) Acceptance of any improper delivery or payment does not  
71 prejudice the aggrieved party's right to demand adequate  
72 assurance of future performance.

73 (4) After receipt of a justified demand failure to provide  
74 within a reasonable time not exceeding 30 days such assurance of

1 due performance as is adequate under the circumstances of the  
2 particular case is a repudiation of the contract.

336#02-610

3 336.2-610 ANTICIPATORY REPUDIATION.

4 When either party repudiates the contract with respect to a  
5 performance not yet due the loss of which will substantially  
6 impair the value of the contract to the other, the aggrieved  
7 party may

8 (a) for a commercially reasonable time await performance by  
9 the repudiating party; or

10 (b) resort to any remedy for breach (section 336.2-703 or  
11 section 336.2-711), even though ~~he~~ the aggrieved party has  
12 notified the repudiating party that ~~he~~ the aggrieved party would  
13 await the latter's performance and has urged retraction; and

14 (c) in either case suspend ~~his-own~~ the aggrieved party's  
15 performance or proceed in accordance with the provisions of this  
16 article on the seller's right to identify goods to the contract  
17 notwithstanding breach or to salvage unfinished goods (section  
18 336.2-704).

336#02-611

19 336.2-611 RETRACTION OF ANTICIPATORY REPUDIATION.

20 (1) Until the repudiating party's next performance is due  
21 ~~he~~ the repudiating party can retract ~~his~~ the repudiation unless  
22 the aggrieved party has since the repudiation cancelled or  
23 materially changed ~~his~~ position or otherwise indicated that ~~he~~  
24 the aggrieved party considers the repudiation final.

25 (2) Retraction may be by any method which clearly indicates  
26 to the aggrieved party that the repudiating party intends to  
27 perform, but must include any assurance justifiably demanded  
28 under the provisions of this article (section 336.2-609).

29 (3) Retraction reinstates the repudiating party's rights  
30 under the contract with due excuse and allowance to the  
31 aggrieved party for any delay occasioned by the repudiation.

336#02-612

32 336.2-612 "INSTALLMENT CONTRACT"; BREACH.

33 (1) An "installment contract" is one which requires or  
34 authorizes the delivery of goods in separate lots to be  
35 separately accepted, even though the contract contains a clause  
36 "each delivery is a separate contract" or its equivalent.

37 (2) The buyer may reject any installment which is  
38 nonconforming if the nonconformity substantially impairs the  
39 value of that installment and cannot be cured or if the  
40 nonconformity is a defect in the required documents; but if the  
41 nonconformity does not fall within subsection (3) and the seller  
42 gives adequate assurance of its cure the buyer must accept that  
43 installment.

44 (3) Whenever nonconformity or default with respect to one  
45 or more installments substantially impairs the value of the  
46 whole contract there is a breach of the whole. But the  
47 aggrieved party reinstates the contract ~~if-he-accepts by~~  
48 accepting a nonconforming installment without seasonably  
49 notifying of cancellation or ~~if-he-brings by bringing~~ an action  
50 with respect only to past installments or ~~demands by demanding~~  
51 performance as to future installments.

336#02-613

52 336.2-613 CASUALTY TO IDENTIFIED GOODS.

53 Where the contract requires for its performance goods  
54 identified when the contract is made, and the goods suffer  
55 casualty without fault of either party before the risk of loss  
56 passes to the buyer, or in a proper case under a "no arrival, no  
57 sale" term (section 336.2-324) then

58 (a) if the loss is total the contract is avoided; and

59 (b) if the loss is partial or the goods have so  
60 deteriorated as no longer to conform to the contract the buyer  
61 may nevertheless demand inspection and ~~at-his-option~~ either  
62 treat the contract as avoided or accept the goods with due  
63 allowance from the contract price for the deterioration or the  
64 deficiency in quantity but without further right against the  
65 seller.

336#02-615

66 336.2-615 EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS.

67 Except so far as a seller may have assumed a greater  
68 obligation and subject to the preceding section on substituted  
69 performance:

70 (a) Delay in delivery or nondelivery in whole or in part by  
71 a seller who complies with paragraphs (b) and (c) is not a

1 breach of ~~his~~ duty under a contract for sale if performance as \*  
 2 agreed has been made impracticable by the occurrence of a  
 3 contingency the non-occurrence of which was a basic assumption  
 4 on which the contract was made or by compliance in good faith  
 5 with any applicable foreign or domestic governmental regulation  
 6 or order whether or not it later proves to be invalid.

7 (b) Where the causes mentioned in paragraph (a) affect only \*  
 8 a part of the seller's capacity to perform, ~~he~~ the seller must \*  
 9 allocate production and deliveries among ~~his~~ the seller's \*  
 10 customers but may ~~at his option~~ include regular customers not \*  
 11 then under contract as well as ~~his~~ the seller's own requirements \*  
 12 for further manufacture. ~~He~~ The seller may so allocate in any \*  
 13 manner which is fair and reasonable.

14 (c) The seller must notify the buyer seasonably that there  
 15 will be delay or nondelivery and, when allocation is required  
 16 under paragraph (b), of the estimated quota thus made available  
 17 for the buyer.

336#02-616

18 336.2-616 PROCEDURE ON NOTICE CLAIMING EXCUSE.

19 (1) Where the buyer receives notification of a material or  
 20 indefinite delay or an allocation justified under the preceding  
 21 section ~~he~~ the buyer may by written notification to the seller \*  
 22 as to any delivery concerned, and where the prospective  
 23 deficiency substantially impairs the value of the whole contract  
 24 under the provisions of this article relating to breach of  
 25 installment contracts section (336.2-612), then also as to the  
 26 whole,

27 (a) terminate and thereby discharge any unexecuted portion  
 28 of the contract; or

29 (b) modify the contract by agreeing to take ~~his~~ the \*  
 30 available quota in substitution.

31 (2) If after receipt of such notification from the seller  
 32 the buyer fails so to modify the contract within a reasonable  
 33 time not exceeding 30 days the contract lapses with respect to  
 34 any deliveries affected.

35 (3) The provisions of this section may not be negated by  
 36 agreement except insofar as the seller has assumed a greater  
 37 obligation under the preceding section.

336#02-702

38 336.2-702 SELLER'S REMEDIES ON DISCOVERY OF BUYER'S  
 39 INSOLVENCY.

40 (1) Where the seller discovers the buyer to be insolvent ~~he~~ \*  
 41 the seller may refuse delivery except for cash including payment \*  
 42 for all goods theretofore delivered under the contract, and stop  
 43 delivery under this article (section 336.2-705).

44 (2) Where the seller discovers that the buyer has received \*  
 45 goods on credit while insolvent ~~he~~ the seller may reclaim the \*  
 46 goods upon demand made within ten days after the receipt, but if  
 47 misrepresentation of solvency has been made to the particular  
 48 seller in writing within three months before delivery the ten  
 49 day limitation does not apply. Except as provided in this  
 50 subsection the seller may not base a right to reclaim goods on  
 51 the buyer's fraudulent or innocent misrepresentation of solvency  
 52 or of intent to pay.

53 (3) The seller's right to reclaim under subsection (2) is  
 54 subject to the rights of a buyer in ordinary course or other  
 55 good faith purchaser under this article (section 336.2-403).  
 56 Successful reclamation of goods excludes all other remedies with  
 57 respect to them.

336#02-704

58 336.2-704 SELLER'S RIGHT TO IDENTIFY GOODS TO THE  
 59 CONTRACT NOTWITHSTANDING BREACH OR TO SALVAGE UNFINISHED GOODS.

60 (1) An aggrieved seller under the preceding section may

61 (a) identify to the contract conforming goods not already \*  
 62 identified if the aggrieved seller possessed or controlled the \*  
 63 goods at the time ~~he learned~~ of learning of the breach ~~they are~~ \*  
 64 ~~in his possession or control~~;

65 (b) treat as the subject of resale goods which have  
 66 demonstrably been intended for the particular contract even  
 67 though those goods are unfinished.

68 (2) Where the goods are unfinished an aggrieved seller may  
 69 in the exercise of reasonable commercial judgment for the  
 70 purposes of avoiding loss and of effective realization either  
 71 complete the manufacture and wholly identify the goods to the  
 72 contract or cease manufacture and resell for scrap or salvage  
 73 value or proceed in any other reasonable manner.

336#02-705

1 336.2-705 SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR  
2 OTHERWISE.

3 (1) The seller may stop delivery of goods in the possession  
4 of a carrier or other bailee ~~when-he-discovers~~ on discovering \*  
5 the buyer to be insolvent (section 336.2-702) and may stop  
6 delivery of carload, truckload, planeload or larger shipments of  
7 express or freight when the buyer repudiates or fails to make a  
8 payment due before delivery or if for any other reason the  
9 seller has a right to withhold or reclaim the goods.

10 (2) As against such buyer the seller may stop delivery  
11 until

12 (a) receipt of the goods by the buyer; or

13 (b) acknowledgment to the buyer by any bailee of the goods  
14 except a carrier that the bailee holds the goods for the buyer;  
15 or

16 (c) such acknowledgment to the buyer by a carrier by  
17 reshipment or as ~~warehouseman~~ warehouse operator; or \*

18 (d) negotiation to the buyer of any negotiable document of  
19 title covering the goods.

20 (3) (a) To stop delivery the seller must so notify as to  
21 enable the bailee by reasonable diligence to prevent delivery of  
22 the goods.

23 (b) After such notification the bailee must hold and  
24 deliver the goods according to the directions of the seller but  
25 the seller is liable to the bailee for any ensuing charges or  
26 damages.

27 (c) If a negotiable document of title has been issued for  
28 goods the bailee is not obliged to obey a notification to stop  
29 until surrender of the document.

30 (d) A carrier who has issued a non-negotiable bill of  
31 lading is not obliged to obey a notification to stop received  
32 from a person other than the consignor.

336#02-706

33 336.2-706 SELLER'S RESALE INCLUDING CONTRACT FOR RESALE.

34 (1) Under the conditions stated in section 336.2-703 on  
35 seller's remedies, the seller may resell the goods concerned or  
36 the undelivered balance thereof. Where the resale is made in  
37 good faith and in a commercially reasonable manner the seller  
38 may recover the difference between the resale price and the  
39 contract price together with any incidental damages allowed  
40 under the provisions of this article (section 336.2-710), but  
41 less expenses saved in consequence of the buyer's breach.

42 (2) Except as otherwise provided in subsection (3) or  
43 unless otherwise agreed resale may be at public or private sale  
44 including sale by way of one or more contracts to sell or of  
45 identification to an existing contract of the seller. Sale may  
46 be as a unit or in parcels and at any time and place and on any  
47 terms but every aspect of the sale including the method, manner,  
48 time, place and terms must be commercially reasonable. The  
49 resale must be reasonably identified as referring to the broken  
50 contract, but it is not necessary that the goods be in existence  
51 or that any or all of them have been identified to the contract  
52 before the breach.

53 (3) Where the resale is at private sale the seller must  
54 give the buyer reasonable notification of ~~his~~ an intention to \*  
55 resell.

56 (4) Where the resale is at public sale

57 (a) only identified goods can be sold except where there is  
58 a recognized market for a public sale of futures in goods of the  
59 kind; and

60 (b) it must be made at a usual place or market for public  
61 sale if one is reasonably available and except in the case of  
62 goods which are perishable or threaten to decline in value  
63 speedily the seller must give the buyer reasonable notice of the  
64 time and place of the resale; and

65 (c) if the goods are not to be within the view of those  
66 attending the sale the notification of sale must state the place  
67 where the goods are located and provide for their reasonable  
68 inspection by prospective bidders; and

69 (d) the seller may buy.

70 (5) A purchaser who buys in good faith at a resale takes  
71 the goods free of any rights of the original buyer even though  
72 the seller fails to comply with one or more of the requirements  
73 of this section.

74 (6) The seller is not accountable to the buyer for any

1 profit made on any resale. A person in the position of a seller  
 2 (section 336.2-707) or a buyer who has rightfully rejected or  
 3 justifiably revoked acceptance must account for any excess over  
 4 the amount of ~~his~~ a security interest, as hereinafter defined \*  
 5 (subsection (3) of section 336.2-711).

336#02-707

6 336.2-707 "PERSON IN THE POSITION OF A SELLER".  
 7 (1) A "person in the position of a seller" includes as  
 8 against a principal an agent who has paid or become responsible  
 9 for the price of goods on behalf of ~~his~~ the principal or anyone \*  
 10 who otherwise holds a security interest or other right in goods  
 11 similar to that of a seller.  
 12 (2) A person in the position of a seller may as provided in  
 13 this article withhold or stop delivery (section 336.2-705) and  
 14 resell (section 336.2-706) and recover incidental damages  
 15 (section 336.2-710).

336#02-709

16 336.2-709 ACTION FOR THE PRICE.  
 17 (1) When the buyer fails to pay the price as it becomes due  
 18 the seller may recover, together with any incidental damages  
 19 under the next section, the price  
 20 (a) of goods accepted or of conforming goods lost or  
 21 damaged within a commercially reasonable time after risk of  
 22 their loss has passed to the buyer; and  
 23 (b) of goods identified to the contract if the seller is  
 24 unable after reasonable effort to resell them at a reasonable  
 25 price or the circumstances reasonably indicate that such effort  
 26 will be unavailing.

27 (2) Where the seller sues for the price ~~he~~ the seller must \*  
 28 hold for the buyer any goods which have been identified to the  
 29 contract and are still in ~~his~~ the seller's control except that \*  
 30 if resale becomes possible ~~he~~ the seller may resell them at any \*  
 31 time prior to the collection of the judgment. The net proceeds  
 32 of any such resale must be credited to the buyer and payment of  
 33 the judgment entitles ~~him~~ the buyer to any goods not resold. \*

34 (3) After the buyer has wrongfully rejected or revoked  
 35 acceptance of the goods or has failed to make a payment due or  
 36 has repudiated (section 336.2-610), a seller who is held not  
 37 entitled to the price under this section shall nevertheless be  
 38 awarded damages for nonacceptance under the preceding section.

336#02-711

39 336.2-711 BUYER'S REMEDIES IN GENERAL; BUYER'S SECURITY  
 40 INTEREST IN REJECTED GOODS.

41 (1) Where the seller fails to make delivery or repudiates  
 42 or the buyer rightfully rejects or justifiably revokes  
 43 acceptance then with respect to any goods involved, and with  
 44 respect to the whole if the breach goes to the whole contract  
 45 (section 336.2-612), the buyer may cancel and ~~whether-or-not-he~~ \*  
 46 has with or without having done so may in addition to recovering \*  
 47 so much of the price as has been paid

48 (a) "cover" and have damages under the next section as to  
 49 all the goods affected whether or not they have been identified  
 50 to the contract; or

51 (b) recover damages for nondelivery as provided in this  
 52 article (section 336.2-713).

53 (2) Where the seller fails to deliver or repudiates the  
 54 buyer may also

55 (a) if the goods have been identified recover them as  
 56 provided in this article (section 336.2-502); or

57 (b) in a proper case obtain specific performance or replevy  
 58 the goods as provided in this article (section 336.2-716).

59 (3) On rightful rejection or justifiable revocation of  
 60 acceptance a buyer has a security interest in goods in ~~his~~ the \*  
 61 buyer's possession or control for any payments made on their \*  
 62 price and any expenses reasonably incurred in their inspection,  
 63 receipt, transportation, care and custody and may hold such  
 64 goods and resell them in like manner as an aggrieved seller  
 65 (section 336.2-706).

336#02-712

66 336.2-712 "COVER";, BUYER'S PROCUREMENT OF SUBSTITUTE  
 67 GOODS.

68 (1) After a breach within the preceding section the buyer  
 69 may "cover" by making in good faith and without unreasonable  
 70 delay any reasonable purchase of or contract to purchase goods  
 71 in substitution for those due from the seller.

72 (2) The buyer may recover from the seller as damages the

1 difference between the cost of cover and the contract price  
 2 together with any incidental or consequential damages as  
 3 hereinafter defined (section 336.2-715), but less expenses saved  
 4 in consequence of the seller's breach.

5 (3) Failure of the buyer to effect cover within this  
 6 section does not bar ~~him~~ the buyer from any other remedy. \*

## 336#02-714

7 336.2-714 BUYER'S DAMAGES FOR BREACH IN REGARD TO  
 8 ACCEPTED GOODS.

9 (1) Where the buyer has accepted goods and given  
 10 notification (subsection (3) of section 336.2-607) ~~he~~ the buyer  
 11 may recover as damages for any nonconformity of tender the loss  
 12 resulting in the ordinary course of events from the seller's  
 13 breach as determined in any manner which is reasonable. \*

14 (2) The measure of damages for breach of warranty is the  
 15 difference at the time and place of acceptance between the value  
 16 of the goods accepted and the value they would have had if they  
 17 had been as warranted, unless special circumstances show  
 18 proximate damages of a different amount.

19 (3) In a proper case any incidental and consequential  
 20 damages under the next section may also be recovered.

## 336#02-716

21 336.2-716 BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR  
 22 REPLEVIN.

23 (1) Specific performance may be decreed where the goods are  
 24 unique or in other proper circumstances.

25 (2) The decree for specific performance may include such  
 26 terms and conditions as to payment of the price, damages, or  
 27 other relief as the court may deem just.

28 (3) The buyer has a right of replevin for goods identified  
 29 to the contract if after reasonable effort ~~he~~ the buyer is  
 30 unable to effect cover for such goods or the circumstances  
 31 reasonably indicate that such effort will be unavailing or if  
 32 the goods have been shipped under reservation and satisfaction  
 33 of the security interest in them has been made or tendered. \*

## 336#02-717

34 336.2-717 DEDUCTION OF DAMAGES FROM THE PRICE.

35 The buyer on notifying the seller of ~~his~~ an intention to do  
 36 so may deduct all or any part of the damages resulting from any  
 37 breach of the contract from any part of the price still due  
 38 under the same contract. \*

## 336#02-718

39 336.2-718 LIQUIDATION OR LIMITATION OF DAMAGES; DEPOSITS.

40 (1) Damages for breach by either party may be liquidated in  
 41 the agreement but only at an amount which is reasonable in the  
 42 light of the anticipated or actual harm caused by the breach,  
 43 the difficulties of proof of loss, and the inconvenience or  
 44 nonfeasibility of otherwise obtaining an adequate remedy. A  
 45 term fixing unreasonably large liquidated damages is void as a  
 46 penalty.

47 (2) Where the seller justifiably withholds delivery of  
 48 goods because of the buyer's breach, the buyer is entitled to  
 49 restitution of any amount by which the sum of ~~his~~ the buyer's  
 50 payments exceeds \*

51 (a) the amount to which the seller is entitled by virtue of  
 52 terms liquidating the seller's damages in accordance with  
 53 subsection (1), or

54 (b) in the absence of such terms, 20 percent of the value  
 55 of the total performance for which the buyer is obligated under  
 56 the contract or \$500, whichever is smaller.

57 (3) The buyer's right to restitution under subsection (2)  
 58 is subject to offset to the extent that the seller establishes

59 (a) a right to recover damages under the provisions of this  
 60 article other than subsection (1), and

61 (b) the amount or value of any benefits received by the  
 62 buyer directly or indirectly by reason of the contract.

63 (4) Where a seller has received payment in goods their  
 64 reasonable value or the proceeds of their resale shall be  
 65 treated as payments for the purposes of subsection (2); but if  
 66 the seller has notice of the buyer's breach before reselling  
 67 goods received in part performance, ~~his~~ the seller's resale is  
 68 subject to the conditions laid down in this article on resale by  
 69 an aggrieved seller (section 336.2-706). \*

## 336#02-722

70 336.2-722 WHO CAN SUE THIRD PARTIES FOR INJURY TO GOODS.

71 Where a third party so deals with goods which have been

1 identified to a contract for sale as to cause actionable injury  
 2 to a party to that contract  
 3 (a) a right of action against the third party is in either  
 4 party to the contract for sale who has title to or a security  
 5 interest or a special property or an insurable interest in the  
 6 goods; and if the goods have been destroyed or converted a right  
 7 of action is also in the party who either bore the risk of loss  
 8 under the contract for sale or has since the injury assumed that  
 9 risk as against the other;  
 10 (b) if at the time of the injury the party plaintiff did  
 11 not bear the risk of loss as against the other party to the  
 12 contract for sale and there is no arrangement between them for  
 13 disposition of the recovery, ~~his~~ the plaintiff's suit or  
 14 settlement is, subject to ~~his~~ the plaintiff's own interest, as a  
 15 fiduciary for the other party to the contract;  
 16 (c) either party may with the consent of the other sue for  
 17 the benefit of whom it may concern.

\*  
\*

336#02-723

18 336.2-723 PROOF OF MARKET PRICE: TIME AND PLACE.  
 19 (1) If an action based on anticipatory repudiation comes to  
 20 trial before the time for performance with respect to some or  
 21 all of the goods, any damages based on market price (section  
 22 336.2-708 or section 336.2-713) shall be determined according to  
 23 the price of such goods prevailing at the time when the  
 24 aggrieved party learned of the repudiation.  
 25 (2) If evidence of a price prevailing at the times or  
 26 places described in this article is not readily available the  
 27 price prevailing within any reasonable time before or after the  
 28 time described or at any other place which in commercial  
 29 judgment or under usage of trade would serve as a reasonable  
 30 substitute for the one described may be used, making any proper  
 31 allowance for the cost of transporting the goods to or from such  
 32 other place.  
 33 (3) Evidence of a relevant price prevailing at a time or  
 34 place other than the one described in this article offered by  
 35 one party is not admissible unless and until ~~he~~ that party has  
 36 given the other party such notice as the court finds sufficient  
 37 to prevent unfair surprise.

\*

336#03-110

38 336.3-110 PAYABLE TO ORDER.  
 39 (1) An instrument is payable to order when by its terms it  
 40 is payable to the order or assigns of any person therein  
 41 specified with reasonable certainty, or to ~~him~~ the person or ~~his~~  
 42 the person's order, or when it is conspicuously designated on  
 43 its face as "exchange" or the like and names a payee. It may be  
 44 payable to the order of  
 45 (a) the maker or drawer; or  
 46 (b) the drawee; or  
 47 (c) a payee who is not maker, drawer or drawee; or  
 48 (d) two or more payees together or in the alternative; or  
 49 (e) an estate, trust or fund, in which case it is payable  
 50 to the order of the representative of such estate, trust or fund  
 51 or ~~his~~ the representative's successors; or  
 52 (f) an office, or an officer by ~~his~~ title as such in which  
 53 case it is payable to the principal but the incumbent of the  
 54 office or ~~his~~ the incumbent's successors may act as if ~~he~~-or  
 55 they the incumbent or a successor were the holder; or  
 56 (g) a partnership or unincorporated association, in which  
 57 case it is payable to the partnership or association and may be  
 58 endorsed or transferred by any person thereto authorized.  
 59 (2) An instrument not payable to order is not made so  
 60 payable by such words as "payable upon return of this instrument  
 61 properly endorsed."  
 62 (3) An instrument made payable both to order and to bearer  
 63 is payable to order unless the bearer words are handwritten or  
 64 typewritten.

\*  
\*  
\*  
\*  
\*  
\*

336#03-117

65 336.3-117 INSTRUMENTS PAYABLE WITH WORDS OF DESCRIPTION.  
 66 An instrument made payable to a named person with the  
 67 addition of words describing ~~him~~ the named person  
 68 (a) as agent or officer of a specified person is payable to  
 69 ~~his~~ the principal but the agent or officer may act as if ~~he~~ the  
 70 agent or officer were the holder;  
 71 (b) as any other fiduciary for a specified person or  
 72 purpose is payable to the payee and may be negotiated,  
 73 discharged or enforced by ~~him~~ the payee;

\*  
\*  
\*



1 (c) in any other manner is payable to the payee  
2 unconditionally and the additional words are without effect on  
3 subsequent parties.

336#03-118

4 336.3-118 AMBIGUOUS TERMS AND RULES OF CONSTRUCTION.

5 The following rules apply to every instrument:

6 (a) Where there is doubt whether the instrument is a draft  
7 or a note the holder may treat it as either. A draft drawn on  
8 the drawer is effective as a note.

9 (b) Handwritten terms control typewritten and printed  
10 terms, and typewritten control printed.

11 (c) Words control figures except that if the words are  
12 ambiguous figures control.

13 (d) Unless otherwise specified a provision for interest  
14 means interest at the judgment rate at the place of payment from  
15 the date of the instrument, or if it is undated from the date of  
16 issue.

17 (e) Unless the instrument otherwise specifies two or more  
18 persons who sign as maker, acceptor or drawer or endorser and as  
19 a part of the same transaction are jointly and severally liable  
20 even though the instrument contains such words as "I promise to  
21 pay."

22 (f) Unless otherwise specified consent to extension  
23 authorizes a single extension for not longer than the original  
24 period. A consent to extension, expressed in the instrument, is  
25 binding on secondary parties and accommodation makers. A holder  
26 may not exercise ~~his~~ the option to extend an instrument over the  
27 objection of a maker or acceptor or other party who in  
28 accordance with section 336.3-604 tenders full payment when the  
29 instrument is due.

336#03-119

30 336.3-119 OTHER WRITINGS AFFECTING INSTRUMENT.

31 (1) As between the obligor and ~~his~~ the obligor's immediate  
32 obligee or any transferee the terms of an instrument may be  
33 modified or affected by any other written agreement executed as  
34 a part of the same transaction, except that a holder in due  
35 course is not affected by any limitation of ~~his~~ the holder's  
36 rights arising out of the separate written agreement if ~~he~~ the  
37 holder had no notice of the limitation when ~~he took~~ taking the  
38 instrument.

39 (2) A separate agreement does not affect the negotiability  
40 of an instrument.

336#03-201

41 336.3-201 TRANSFER: RIGHT TO ENDORSEMENT.

42 (1) Transfer of an instrument vests in the transferee such  
43 rights as the transferor has therein, except that a transferee  
44 who has ~~himself~~ been a party to any fraud or illegality  
45 affecting the instrument or who as a prior holder had notice of  
46 a defense or claim against it cannot improve ~~his~~ position by  
47 taking from a later holder in due course.

48 (2) A transfer of a security interest in an instrument  
49 vests the foregoing rights in the transferee to the extent of  
50 the interest transferred.

51 (3) Unless otherwise agreed any transfer for value of an  
52 instrument not then payable to bearer gives the transferee the  
53 specifically enforceable right to have the unqualified  
54 endorsement of the transferor. Negotiation takes effect only  
55 when the endorsement is made and until that time there is no  
56 presumption that the transferee is the owner.

336#03-203

57 336.3-203 WRONG OR MISSPELLED NAME.

58 Where an instrument is made payable to a person under a  
59 misspelled name or one other than ~~his~~ the person's own ~~he~~ the  
60 person may endorse in that name or ~~his~~ the person's own or both;  
61 but signature in both names may be required by a person paying  
62 or giving value for the instrument.

336#03-204

63 336.3-204 SPECIAL ENDORSEMENT; BLANK ENDORSEMENT.

64 (1) A special endorsement specifies the person to whom or  
65 to whose order it makes the instrument payable. Any instrument  
66 specially endorsed becomes payable to the order of the special  
67 endorsee and may be further negotiated only by ~~his~~ the special  
68 endorsee's endorsement.

69 (2) An endorsement in blank specifies no particular  
70 endorsee and may consist of a mere signature. An instrument  
71 payable to order and endorsed in blank becomes payable to bearer

1 and may be negotiated by delivery alone until specially endorsed.  
 2 (3) The holder may convert a blank endorsement into a  
 3 special endorsement by writing over the signature of the  
 4 endorser in blank any contract consistent with the character of  
 5 the endorsement.

## 336#03-206

6 336.3-206 EFFECT OF RESTRICTIVE ENDORSEMENT.

7 (1) No restrictive endorsement prevents further transfer or  
 8 negotiation of the instrument.

9 (2) An intermediary bank, or a payor bank which is not the  
 10 depository bank, is neither given notice nor otherwise affected  
 11 by a restrictive endorsement of any person except the bank's  
 12 immediate transferor or the person presenting for payment.

13 (3) Except for an intermediary bank, any transferee under  
 14 an endorsement which is conditional or includes the words "for  
 15 collection," "for deposit," "pay any bank," or like terms  
 16 (subparagraphs (a) and (c) of section 336.3-205) must pay or  
 17 apply any value given by ~~him~~ the transferee for or on the \*  
 18 security of the instrument consistently with the endorsement and \*  
 19 the transferee to the extent ~~that he does~~ of doing so he becomes \*  
 20 a holder for value. In addition such transferee is a holder in \*  
 21 due course ~~if he~~ by virtue of otherwise ~~complies~~ complying with \*  
 22 the requirements of section 336.3-302 on what constitutes a  
 23 holder in due course.

24 (4) The first taker under an endorsement for the benefit of  
 25 the endorser or another person (subparagraph (d) of section  
 26 336.3-205) must pay or apply any value given by ~~him~~ the first \*  
 27 taker for or on the security of the instrument consistently with \*  
 28 the endorsement and to the extent ~~that he does~~ of doing so he \*  
 29 becomes a holder for value. In addition such taker ~~is~~ becomes a \*  
 30 holder in due course ~~if he~~ by otherwise ~~complies~~ complying with \*  
 31 the requirements of section 336.3-302 on what constitutes a  
 32 holder in due course. A later holder for value is neither given  
 33 notice nor otherwise affected by such restrictive endorsement  
 34 unless ~~he~~ that holder has knowledge that a fiduciary or other \*  
 35 person has negotiated the instrument in any transaction for ~~his~~ \*  
 36 that person's own benefit or otherwise in breach of duty \*  
 37 (subsection (2) of section 336.3-304).

## 336#03-208

38 336.3-208 REACQUISITION.

39 Where an instrument is returned to or reacquired by a prior  
 40 party ~~he~~ the prior party may cancel any endorsement which is not \*  
 41 necessary to ~~his~~ the prior party's title and reissue or further \*  
 42 negotiate the instrument, but any intervening party is  
 43 discharged as against the reacquiring party and subsequent  
 44 holders not in due course and if ~~his~~ the intervening party's \*  
 45 endorsement has been cancelled is discharged as against  
 46 subsequent holders in due course as well.

## 336#03-301

47 336.3-301 RIGHTS OF A HOLDER.

48 The holder of an instrument whether or not ~~he~~ the holder is \*  
 49 the owner may transfer or negotiate it and, except as otherwise  
 50 provided in section 336.3-603 on payment or satisfaction,  
 51 discharge it or enforce payment in ~~his~~ the holder's own name. \*

## 336#03-303

52 336.3-303 TAKING FOR VALUE.

53 A holder takes the instrument for value

54 (a) to the extent that the agreed consideration has been \*  
 55 performed or that ~~he~~ the holder acquires a security interest in \*  
 56 or a lien on the instrument otherwise than by legal process; or

57 (b) when ~~he~~ the holder takes the instrument in payment of \*  
 58 or as security for an antecedent claim against any person  
 59 whether or not the claim is due; or

60 (c) when ~~he~~ the holder gives a negotiable instrument for it \*  
 61 or makes an irrevocable commitment to a third person.

## 336#03-304

62 336.3-304 NOTICE TO PURCHASER.

63 (1) The purchaser has notice of a claim or defense if

64 (a) the instrument is so incomplete, bears such visible  
 65 evidence of forgery or alteration, or is otherwise so irregular  
 66 as to call into question its validity, terms or ownership or to  
 67 create an ambiguity as to the party to pay; or

68 (b) the purchaser has notice that the obligation of any  
 69 party is voidable in whole or in part, or that all parties have  
 70 been discharged.

71 (2) The purchaser has notice of a claim against the

1 instrument when ~~he~~ the purchaser has knowledge that a fiduciary \*  
 2 has negotiated the instrument in payment of or as security \*  
 3 for ~~his~~ the fiduciary's own debt or in any transaction for ~~his~~ \*  
 4 the fiduciary's own benefit or otherwise in breach of duty. \*

5 (3) The purchaser has notice that an instrument is overdue \*  
 6 if ~~he~~ the purchaser has reason to know \*

7 (a) that any part of the principal amount is overdue or \*  
 8 that there is an uncured default in payment of another \*  
 9 instrument of the same series; or

10 (b) that acceleration of the instrument has been made; or

11 (c) that ~~he~~ the purchaser is taking a demand instrument \*  
 12 after demand has been made or mor- than a reasonable length of \*  
 13 time after its issue. A reasonable time for a check drawn and \*  
 14 payable within the states and territories of the United States \*  
 15 and the District of Columbia is presumed to be 30 days.

16 (4) Knowledge of the following facts does not of itself \*  
 17 give the purchaser notice of a defense or claim:

18 (a) That the instrument is antedated or postdated;

19 (b) That it was issued or negotiated in return for an \*  
 20 executory promise or accompanied by a separate agreement, unless \*  
 21 the purchaser has notice that a defense or claim has arisen from \*  
 22 the terms thereof;

23 (c) That any party has signed for accommodation;

24 (d) That an incomplete instrument has been completed, \*  
 25 unless the purchaser has notice of any improper completion;

26 (e) That any person negotiating the instrument is or was a \*  
 27 fiduciary;

28 (f) That there has been default in payment of interest on \*  
 29 the instrument or in payment of any other instrument, except one \*  
 30 of the same series.

31 (5) The filing or recording of a document does not of \*  
 32 itself constitute notice within the provisions of this article \*  
 33 to a person who would otherwise be a holder in due course.

34 (6) To be effective notice must be received at such time \*  
 35 and in such manner as to give a reasonable opportunity to act on \*  
 36 it.

336#03-305

37 336.3-305 RIGHTS OF A HOLDER IN DUE COURSE.

38 To the extent that a holder is a holder in due course ~~he~~ \*  
 39 the holder takes the instrument free from \*

40 (1) all claims to it on the part of any person; and

41 (2) all defenses of any party to the instrument with whom \*  
 42 the holder has not dealt except

43 (a) infancy, to the extent that it is a defense to a simple \*  
 44 contract; and

45 (b) such other incapacity, or duress, or illegality of the \*  
 46 transaction, as renders the obligation of the party a nullity; \*  
 47 and

48 (c) such misrepresentation as has induced the party to sign \*  
 49 the instrument with neither knowledge nor reasonable opportunity \*  
 50 to obtain knowledge of its character or its essential terms; and

51 (d) discharge in insolvency proceedings; and

52 (e) any other discharge of which the holder has notice when \*  
 53 ~~he-takes~~ taking the instrument. \*

336#03-306

54 336.3-306 RIGHTS OF ONE NOT HOLDER IN DUE COURSE.

55 Unless ~~he~~ a person has the rights of a holder in due course \*  
 56 ~~any~~ the person takes the instrument subject to \*

57 (a) all valid claims to it on the part of any person; and

58 (b) all defenses of any party which would be available in \*  
 59 an action on a simple contract; and

60 (c) the defenses of want or failure of consideration, \*  
 61 nonperformance of any condition precedent, nondelivery, or \*  
 62 delivery for a special purpose (section 336.3-408); and

63 (d) the defense that ~~he~~ the taker or a person through whom \*  
 64 ~~he~~ the taker holds the instrument acquired it by theft, or that \*  
 65 payment or satisfaction to such holder would be inconsistent

66 with the terms of a restrictive endorsement. The claim of any \*  
 67 third person to the instrument is not otherwise available as a

68 defense to any party liable thereon unless the third \*  
 69 person ~~himself~~ actually defends the action for such party. \*

336#03-307

70 336.3-307 BURDEN OF ESTABLISHING SIGNATURES, DEFENSES \*  
 71 AND DUE COURSE. \*

72 (1) Unless specifically denied in the pleadings each \*  
 73 signature on an instrument is admitted. When the effectiveness

1 of a signature is put in issue  
 2 (a) the burden of establishing it is on the party claiming  
 3 under the signature; but  
 4 (b) the signature is presumed to be genuine or authorized  
 5 except where the action is to enforce the obligation of a  
 6 purported signer who has died or become incompetent before proof  
 7 is required.  
 8 (2) When signatures are admitted or established, production  
 9 of the instrument entitles a holder to recover on it unless the  
 10 defendant establishes a defense.  
 11 (3) After it is shown that a defense exists a person  
 12 claiming the rights of a holder in due course has the burden of  
 13 establishing that he the claimant or some person under whom  
 14 he the claimant claims is in all respects a holder in due course. \*

336#03-401

15 336.3-401 SIGNATURE.

16 (1) No person is liable on an instrument unless his the \*  
 17 person's signature appears thereon. \*18 (2) A signature is made by use of any name, including any  
 19 trade or assumed name, upon an instrument, or by any word or  
 20 mark used in lieu of a written signature.

336#03-403

21 336.3-403 SIGNATURE BY AUTHORIZED REPRESENTATIVE.

22 (1) A signature may be made by an agent or other  
 23 representative, and his the authority to make it may be \*  
 24 established as in other cases of representation. No particular  
 25 form of appointment is necessary to establish such authority.26 (2) An authorized representative who signs his-own the \*  
 27 authorized representative's name to an instrument \*28 (a) is personally obligated if the instrument neither names  
 29 the person represented nor shows that the representative signed  
 30 in a representative capacity;31 (b) except as otherwise established between the immediate  
 32 parties, is personally obligated if the instrument names the  
 33 person represented but not show that the representative signed  
 34 in a representative capacity, or if the instrument does not name  
 35 the person represented but does show that the representative  
 36 signed in a representative capacity.37 (3) Except as otherwise established the name of an  
 38 organization preceded or followed by the name and office of an  
 39 authorized individual is a signature made in a representative  
 40 capacity.

336#03-404

41 336.3-404 UNAUTHORIZED SIGNATURES.

42 (1) Any unauthorized signature is wholly inoperative as  
 43 that of the person whose name is signed unless he the named \*  
 44 person ratifies it or is precluded from denying it; but it \*  
 45 operates as the signature of the unauthorized signer in favor of  
 46 any person who in good faith pays the instrument or takes it for  
 47 value.48 (2) Any unauthorized signature may be ratified for all  
 49 purposes of this article. Such ratification does not of itself  
 50 affect any rights of the person ratifying against the actual  
 51 signer.

336#03-405

52 336.3-405 IMPOSTORS; SIGNATURE IN NAME OF PAYEE.

53 (1) An endorsement by any person in the name of a named  
 54 payee is effective if55 (a) an impostor by use of the mails or otherwise has  
 56 induced the maker or drawer to issue the instrument to him the \*  
 57 imposter or his a confederate in the name of the payee; or \*58 (b) a person signing as or on behalf of a maker or drawer  
 59 intends the payee to have no interest in the instrument; or60 (c) an agent or employee of the maker or drawer has  
 61 supplied him the maker or drawer with the name of the payee \*  
 62 intending the latter to have no such interest.63 (2) Nothing in this section shall affect the criminal or  
 64 civil liability of the person so endorsing.

336#03-406

65 336.3-406 NEGLIGENCE CONTRIBUTING TO ALTERATION OR  
 66 UNAUTHORIZED SIGNATURE.67 Any person who-by-his whose negligence substantially \*  
 68 contributes to a material alteration of the instrument or to the  
 69 making of an unauthorized signature is precluded from asserting  
 70 the alteration or lack of authority against a holder in due  
 71 course or against a drawee or other payor who pays the

1 instrument in good faith and in accordance with the reasonable  
2 commercial standards of the drawee's or payor's business.

336#03-407

3 336.3-407 ALTERATION.

4 (1) Any alteration of an instrument is material which  
5 changes the contract of any party thereto in any respect,  
6 including any such change in

7 (a) the number or relations of the parties; or

8 (b) an incomplete instrument, by completing it otherwise  
9 than as authorized; or

10 (c) the writing as signed, by adding to it or by removing  
11 any part of it.

12 (2) As against any person other than a subsequent holder in  
13 due course

14 (a) alteration by the holder which is both fraudulent and  
15 material discharges any party whose contract is thereby changed  
16 unless that party assents or is precluded from asserting the  
17 defense;

18 (b) no other alteration discharges any party and the  
19 instrument may be enforced according to its original tenor, or  
20 as to incomplete instruments according to the authority given.

21 (3) A subsequent holder in due course may in all cases  
22 enforce the instrument according to its original tenor, and when  
23 an incomplete instrument has been completed, he that holder may  
24 enforce it as completed. \*

336#03-409

25 336.3-409 DRAFT NOT AN ASSIGNMENT.

26 (1) A check or other draft does not of itself operate as an  
27 assignment of any funds in the hands of the drawee available for  
28 its payment, and the drawee is not liable on the instrument  
29 until he accepts accepting it. \*

30 (2) Nothing in this section shall affect any liability in  
31 contract, tort or otherwise arising from any letter of credit or  
32 other obligation or representation which is not an acceptance.

336#03-410

33 336.3-410 DEFINITION AND OPERATION OF ACCEPTANCE.

34 (1) Acceptance is the drawee's signed engagement to honor  
35 the draft as presented. It must be written on the draft, and  
36 may consist of his the drawee's signature alone. It becomes  
37 operative when completed by delivery or notification. \*

38 (2) A draft may be accepted although it has not been signed  
39 by the drawer or is otherwise incomplete or is overdue or has  
40 been dishonored.

41 (3) Where the draft is payable at a fixed period after  
42 sight and the acceptor fails to date his the acceptance the  
43 holder may complete it by supplying a date in good faith. \*

336#03-412

44 336.3-412 ACCEPTANCE VARYING DRAFT.

45 (1) Where the drawee's proffered acceptance in any manner  
46 varies the draft as presented the holder may refuse the  
47 acceptance and treat the draft as dishonored in which case the  
48 drawee is entitled to have his the acceptance cancelled. \*

49 (2) The terms of the draft are not varied by an acceptance  
50 to pay at any particular bank or place in the United States,  
51 unless the acceptance states that the draft is to be paid only  
52 at such bank or place.

53 (3) Where the holder assents to an acceptance varying the  
54 terms of the draft each drawer and endorser who does not  
55 affirmatively assent is discharged.

336#03-413

56 336.3-413 CONTRACT OF MAKER, DRAWER AND ACCEPTOR.

57 (1) The maker or acceptor engages ~~that he will~~ to pay the  
58 instrument according to its tenor at the time of his the  
59 engagement or as completed pursuant to section 336.3-115 on  
60 incomplete instruments. \*

61 (2) The drawer engages that upon dishonor of the draft and  
62 any necessary notice of dishonor or protest he the drawer will  
63 pay the amount of the draft to the holder or to any endorser who  
64 takes it up. The drawer may disclaim this liability by drawing  
65 without recourse. \*

66 (3) By making, drawing or accepting the party admits as  
67 against all subsequent parties including the drawee the  
68 existence of the payee and his the payee's then capacity to  
69 endorse. \*

336#03-414

70 336.3-414 CONTRACT OF ENDORSER; ORDER OF LIABILITY.

1 (1) Unless the endorsement otherwise specifies (as by such  
 2 words as "without recourse") every endorser engages that upon  
 3 dishonor and any necessary notice of dishonor and protest he the \*  
 4 endorser will pay the instrument according to its tenor at the \*  
 5 time of his the endorsement to the holder or to any subsequent \*  
 6 endorser who takes it up, even though the endorser who takes it  
 7 up was not obligated to do so.

8 (2) Unless they otherwise agree endorsers are liable to one  
 9 another in the order in which they endorse, which is presumed to  
 10 be the order in which their signatures appear on the instrument.  
 336#03-415

11 336.3-415 CONTRACT OF ACCOMMODATION PARTY.

12 (1) An accommodation party is one who signs the instrument  
 13 in any capacity for the purpose of lending his the accommodation \*  
 14 party's name to another party to it. \*

15 (2) When the instrument has been taken for value before it  
 16 is due the accommodation party is liable in the capacity in  
 17 which he the accommodation party has signed even though the \*  
 18 taker knows of the accommodation.

19 (3) As against a holder in due course and without notice of  
 20 the accommodation oral proof of the accommodation is not  
 21 admissible to give the accommodation party the benefit of  
 22 discharges dependent on his the accommodation party's character \*  
 23 as such. In other cases the accommodation character may be  
 24 shown by oral proof.

25 (4) An endorsement which shows that it is not in the chain  
 26 of title is notice of its accommodation character.

27 (5) An accommodation party is not liable to the party  
 28 accommodated, and ~~if he pays~~ on paying the instrument has a \*  
 29 right of recourse on the instrument against such party.

336#03-416

30 336.3-416 CONTRACT OF GUARANTOR.

31 (1) "Payment guaranteed" or equivalent words added to a  
 32 signature mean that the signer engages that if the instrument is  
 33 not paid when due he the signer will pay it according to its \*  
 34 tenor without resort by the holder to any other party.

35 (2) "Collection guaranteed" or equivalent words added to a  
 36 signature mean that the signer engages that if the instrument is  
 37 not paid when due he the signer will pay it according to its \*  
 38 tenor, but only after the holder has reduced his the holder's \*  
 39 claim against the maker or acceptor to judgment and execution  
 40 has been returned unsatisfied, or after the maker or acceptor  
 41 has become insolvent or it is otherwise apparent that it is  
 42 useless to proceed against him the maker or acceptor. \*

43 (3) Words of guaranty which do not otherwise specify  
 44 guarantee payment.

45 (4) No words of guaranty added to the signature of a sole  
 46 maker or acceptor affect his the maker's or acceptor's liability \*  
 47 on the instrument. Such words added to the signature of one of  
 48 two or more makers or acceptors create a presumption that the  
 49 signature is for the accommodation of the others.

50 (5) When words of guaranty are used presentment, notice of  
 51 dishonor and protest are not necessary to charge the user.

52 (6) Any guaranty written on the instrument is enforceable  
 53 notwithstanding any statute of frauds.

336#03-417

54 336.3-417 WARRANTIES ON PRESENTMENT AND TRANSFER.

55 (1) Any person who obtains payment or acceptance and any  
 56 prior transferor warrants to a person who in good faith pays or  
 57 accepts that

58 (a) he the warrantor has a good title to the instrument or \*  
 59 is authorized to obtain payment or acceptance on behalf of one  
 60 who has a good title; and

61 (b) he the warrantor has no knowledge that the signature of \*  
 62 the maker or drawer is unauthorized, except that this warranty  
 63 is not given by a holder in due course acting in good faith

64 (i) to a maker with respect to the maker's own signature;  
 65 or

66 (ii) to a drawer with respect to the drawer's own  
 67 signature, whether or not the drawer is also the drawee; or

68 (iii) to an acceptor of a draft if the holder in due course  
 69 took the draft after the acceptance or obtained the acceptance  
 70 without knowledge that the drawer's signature was unauthorized;  
 71 and

72 (c) the instrument has not been materially altered, except  
 73 that this warranty is not given by a holder in due course acting

1 in good faith  
 2 (i) to the maker of a note; or  
 3 (ii) to the drawer of a draft whether or not the drawer is  
 4 also the drawee; or  
 5 (iii) to the acceptor of a draft with respect to an  
 6 alteration made prior to the acceptance if the holder in due  
 7 course took the draft after the acceptance, even though the  
 8 acceptance provided "payable as originally drawn" or equivalent  
 9 terms; or  
 10 (iv) to the acceptor of a draft with respect to an  
 11 alteration made after the acceptance.

12 (2) Any person who transfers an instrument and receives  
 13 consideration warrants to ~~his~~ the transferee and if the transfer  
 14 is by endorsement to any subsequent holder who takes the  
 15 instrument in good faith that

16 (a) ~~he~~ the transferor has a good title to the instrument or  
 17 is authorized to obtain payment or acceptance on behalf of one  
 18 who has had a good title and the transfer is otherwise rightful;  
 19 and

20 (b) all signatures are genuine or authorized; and

21 (c) the instrument has not been materially altered; and

22 (d) no defense of any party is good against ~~him~~ the  
 23 transferor; and

24 (e) ~~he~~ the transferor has no knowledge of any insolvency  
 25 proceeding instituted with respect to the maker or acceptor or  
 26 the drawer of an unaccepted instrument.

27 (3) By transferring "without recourse" the transferor  
 28 limits the obligation stated in subsection (2) (d) to a warranty  
 29 that ~~he~~ the transferor has no knowledge of such a defense.

30 (4) A selling agent or broker who does not disclose the  
 31 fact that ~~he~~ the agent or broker is acting only as such gives  
 32 the warranties provided in this section, but ~~if he makes by~~  
 33 making such disclosure warrants only ~~his~~ the agent's or broker's  
 34 good faith and authority.

336#03-418

35 336.3-418 FINALITY OF PAYMENT OR ACCEPTANCE.

36 Except for recovery of bank payments as provided in the  
 37 article on bank deposits and collections (article 4) and except  
 38 for liability for breach of warranty on presentment under the  
 39 preceding section, payment or acceptance of any instrument is  
 40 final in favor of a holder in due course, or a person who has in  
 41 good faith changed ~~his~~ position in reliance on the payment.

336#03-419

42 336.3-419 CONVERSION OF INSTRUMENT; INNOCENT  
 43 REPRESENTATIVE.

44 (1) An instrument is converted when

45 (a) a drawee to whom it is delivered for acceptance refuses  
 46 to return it on demand; or

47 (b) any person to whom it is delivered for payment refuses  
 48 on demand either to pay or to return it; or

49 (c) it is paid on a forged endorsement.

50 (2) In an action against a drawee under subsection (1) the  
 51 measure of the drawee's liability is the face amount of the  
 52 instrument. In any other action under subsection (1) the measure  
 53 of liability is presumed to be the face amount of the instrument.

54 (3) Subject to the provisions of this chapter concerning  
 55 restrictive endorsements a representative, including a  
 56 depository or collecting bank, who has in good faith and in  
 57 accordance with the reasonable commercial standards applicable  
 58 to the business of such representative dealt with an instrument  
 59 or its proceeds on behalf of one who was not the true owner is  
 60 not liable in conversion or otherwise to the true owner beyond  
 61 the amount of any proceeds remaining in ~~his~~ its hands.

62 (4) An intermediary bank or payor bank which is not a  
 63 depository bank is not liable in conversion solely by reason of  
 64 the fact that proceeds of an item endorsed restrictively  
 65 (sections 336.3-205 and 336.3-206) are not paid or applied  
 66 consistently with the restrictive endorsement of an endorser  
 67 other than its immediate transferor.

336#03-501

68 336.3-501 WHEN PRESENTMENT, NOTICE OF DISHONOR, AND  
 69 PROTEST NECESSARY OR PERMISSIBLE.

70 (1) Unless excused (section 336.3-511) presentment is  
 71 necessary to charge secondary parties as follows:

72 (a) Presentment for acceptance is necessary to charge the  
 73 drawer and endorsers of a draft where the draft so provides, or

1 is payable elsewhere than at the residence or place of business  
 2 of the drawee, or its date of payment depends upon such  
 3 presentment. The holder ~~may-at-his-option-present~~ has the  
 4 option of presenting for acceptance any other draft payable at a  
 5 stated date;

\*  
\*

6 (b) Presentment for payment is necessary to charge any  
 7 endorser;

8 (c) In the case of any drawer, the acceptor of a draft  
 9 payable at a bank or the maker of a note payable at a bank,  
 10 presentment for payment is necessary, but failure to make  
 11 presentment discharges such drawer, acceptor or maker only as  
 12 stated in section 336.3-502(1) (b).

13 (2) Unless excused (section 336.3-511)

14 (a) notice of any dishonor is necessary to charge any  
 15 endorser;

16 (b) in the case of any drawer, the acceptor of a draft  
 17 payable at a bank or the maker of a note payable at a bank,  
 18 notice of any dishonor is necessary, but failure to give such  
 19 notice discharges such drawer, acceptor or maker only as stated  
 20 in section 336.3-502(1) (b).

21 (3) Unless excused (section 336.3-511) protest of any  
 22 dishonor is necessary to charge the drawer and endorsers of any  
 23 draft which on its face appears to be drawn or payable outside  
 24 of the states, territories, dependencies and possessions of the  
 25 United States, the District of Columbia and the Commonwealth of  
 26 Puerto Rico. The holder ~~may-at-his-option-make~~ has the option  
 27 of making protest of any dishonor of any other instrument and in  
 28 the case of a foreign draft may on insolvency of the acceptor  
 29 before maturity make protest for better security.

\*  
\*

30 (4) Notwithstanding any provision of this section, neither  
 31 presentment nor notice of dishonor nor protest is necessary to  
 32 charge an endorser who has endorsed an instrument after maturity.

336#03-502

33 336.3-502 UNEXCUSED DELAY; DISCHARGE.

34 (1) Where without excuse any necessary presentment or  
 35 notice of dishonor is delayed beyond the time when it is due

36 (a) any endorser is discharged; and

37 (b) any drawer or the acceptor of a draft payable at a bank  
 38 or the maker of a note payable at a bank who because the drawee  
 39 or payor bank becomes insolvent during the delay is deprived of  
 40 funds maintained with the drawee or payor bank to cover the  
 41 instrument may discharge ~~his~~ liability by written assignment to  
 42 the holder of ~~his~~ that person's rights against the drawee or  
 43 payor bank in respect of such funds, but such drawer, acceptor  
 44 or maker is not otherwise discharged.

\*  
\*

45 (2) Where without excuse a necessary protest is delayed  
 46 beyond the time when it is due any drawer or endorser is  
 47 discharged.

336#03-503

48 336.3-503 TIME OF PRESENTMENT.

49 (1) Unless a different time is expressed in the instrument  
 50 the time for any presentment is determined as follows:

51 (a) Where an instrument is payable at or a fixed period  
 52 after a stated date any presentment for acceptance must be made  
 53 on or before the date it is payable;

54 (b) Where an instrument is payable after sight it must  
 55 either be presented for acceptance or negotiated within a  
 56 reasonable time after date or issue whichever is later;

57 (c) Where an instrument shows the date on which it is  
 58 payable presentment for payment is due on that date;

59 (d) Where an instrument is accelerated presentment for  
 60 payment is due within a reasonable time after the acceleration;

61 (e) With respect to the liability of any secondary party  
 62 presentment for acceptance or payment of any other instrument is  
 63 due within a reasonable time after such party becomes liable  
 64 thereon.

65 (2) A reasonable time for presentment is determined by the  
 66 nature of the instrument, any usage of banking or trade and the  
 67 facts of the particular case. In the case of an uncertified  
 68 check which is drawn and payable within the United States and  
 69 which is not a draft drawn by a bank the following are presumed  
 70 to be reasonable periods within which to present for payment or  
 71 to initiate bank collection:

72 (a) With respect to the liability of the drawer, 30 days  
 73 after date or issue whichever is later; and

74 (b) With respect to the liability of an endorser, seven



1 days after his endorsement. \*

2 (3) Where any presentment is due on a day which is not a  
3 full business day for either the person making presentment or  
4 the party to pay or accept, presentment is due on the next  
5 following day which is a full business day for both parties.

6 (4) Presentment to be sufficient must be made at a  
7 reasonable hour, and if at a bank during its banking day.

336#03-504

8 336.3-504 HOW PRESENTMENT MADE.

9 (1) Presentment is a demand for acceptance or payment made  
10 upon the maker, acceptor, drawee or other payor by or on behalf  
11 of the holder.

12 (2) Presentment may be made

13 (a) by mail, in which event the time of presentment is  
14 determined by the time of receipt of the mail; or

15 (b) through a clearing house; or

16 (c) at the place of acceptance or payment specified in the  
17 instrument or if there be none at the place of business or  
18 residence of the party to accept or pay. If neither the party  
19 to accept or pay nor anyone authorized to act for him that party \*  
20 is present or accessible at such place presentment is excused.

21 (3) It may be made

22 (a) to any one of two or more makers, acceptors, drawees or  
23 other payors; or

24 (b) to any person who has authority to make or refuse the  
25 acceptance or payment.

26 (4) A draft accepted or a note made payable at a bank in  
27 the United States must be presented at such bank.

28 (5) In the cases described in section 336.4-210 presentment  
29 may be made in the manner and with the result stated in that  
30 section.

336#03-505

31 336.3-505 RIGHTS OF PARTY TO WHOM PRESENTMENT IS MADE.

32 (1) The party to whom presentment is made may without  
33 dishonor require

34 (a) exhibition of the instrument; and

35 (b) reasonable identification of the person making  
36 presentment and evidence of his the presenter's authority to \*  
37 make it if made for another; and

38 (c) that the instrument be produced for acceptance or  
39 payment at a place specified in it, or if there be none at any  
40 place reasonable in the circumstances; and

41 (d) a signed receipt on the instrument for any partial or  
42 full payment and its surrender upon full payment.

43 (2) Failure to comply with any such requirement invalidates  
44 the presentment but the person presenting has a reasonable time  
45 in which to comply and the time for acceptance or payment runs  
46 from the time of compliance.

336#03-507

47 336.3-507 DISHONOR; HOLDER'S RIGHT OF RECOURSE; TERM  
48 ALLOWING RE-PRESENTMENT.

49 (1) An instrument is dishonored when

50 (a) a necessary or optional presentment is duly made and  
51 due acceptance or payment is refused or cannot be obtained  
52 within the prescribed time or in case of bank collections the  
53 instrument is seasonably returned by the midnight deadline  
54 (section 336.4-301); or

55 (b) presentment is excused and the instrument is not duly  
56 accepted or paid.

57 (2) Subject to any necessary notice of dishonor and  
58 protest, the holder has upon dishonor an immediate right of  
59 recourse against the drawers and endorsers.

60 (3) Return of an instrument for lack of proper endorsement  
61 is not dishonor.

62 (4) A term in a draft or an endorsement thereof allowing a  
63 stated time for re-presentment in the event of any dishonor of  
64 the draft by nonacceptance if a time draft or by nonpayment if a  
65 sight draft gives the holder as against any secondary party  
66 bound by the term an option to waive the dishonor without  
67 affecting the liability of the secondary party and he the holder \*  
68 may present again up to the end of the stated time.

336#03-508

69 336.3-508 NOTICE OF DISHONOR.

70 (1) Notice of dishonor may be given to any person who may  
71 be liable on the instrument by or on behalf of the holder or any  
72 party who has himself received notice, or any other party who \*

1 can be compelled to pay the instrument. In addition an agent or  
 2 bank in whose hands the instrument is dishonored may give notice  
 3 to ~~his~~ its principal or customer or to another agent or bank  
 4 from which the instrument was received. \*

5 (2) Any necessary notice must be given by a bank before its  
 6 midnight deadline and by any other person before midnight of the  
 7 third business day after dishonor or receipt of notice of  
 8 dishonor.

9 (3) Notice may be given in any reasonable manner. It may  
 10 be oral or written and in any terms which identify the  
 11 instrument and state that it has been dishonored. A  
 12 misdescription which does not mislead the party notified does  
 13 not vitiate the notice. Sending the instrument bearing a stamp,  
 14 ticket or writing stating that acceptance or payment has been  
 15 refused or sending a notice of debit with respect to the  
 16 instrument is sufficient.

17 (4) Written notice is given when sent although it is not  
 18 received.

19 (5) Notice to one partner is notice to each although the  
 20 firm has been dissolved.

21 (6) When any party is in insolvency proceedings instituted  
 22 after the issue of the instrument notice may be given either to  
 23 the party or to the representative of ~~his~~ the party's estate. \*

24 (7) When any party is dead or incompetent notice may be  
 25 sent to ~~his~~ the party's last known address or given to ~~his~~ a  
 26 personal representative. \*

27 (8) Notice operates for the benefit of all parties who have  
 28 rights on the instrument against the party notified.

336#03-511

29 336.3-511 WAIVED OR EXCUSED PRESENTMENT, PROTEST OR  
 30 NOTICE OF DISHONOR OR DELAY THEREIN.

31 (1) Delay in presentment, protest or notice of dishonor is  
 32 excused when the party is without notice that it is due or when  
 33 the delay is caused by circumstances beyond ~~his~~ the party's  
 34 control and ~~he~~ the party exercises reasonable diligence after  
 35 the cause of the delay ceases to operate. \*

36 (2) Presentment or notice or protest as the case may be is  
 37 entirely excused when

38 (a) the party to be charged has waived it expressly or by  
 39 implication either before or after it is due; or

40 (b) such party has ~~himself~~ dishonored the instrument or has  
 41 countermanded payment or otherwise has no reason to except or  
 42 right to require that the instrument be accepted or paid; or

43 (c) by reasonable diligence the presentment or protest  
 44 cannot be made or the notice given. \*

45 (3) Presentment is also entirely excused when

46 (a) the maker, acceptor or drawee of any instrument except  
 47 a documentary draft is dead or in insolvency proceedings  
 48 instituted after the issue of the instrument; or

49 (b) acceptance or payment is refused but not for want of  
 50 proper presentment.

51 (4) Where a draft has been dishonored by nonacceptance a  
 52 later presentment for payment and any notice of dishonor and  
 53 protest for nonpayment are excused unless in the meantime the  
 54 instrument has been accepted.

55 (5) A waiver of protest is also a waiver of presentment and  
 56 of notice of dishonor even though protest is not required.

57 (6) Where a waiver of presentment or notice or protest is  
 58 embodied in the instrument itself it is binding upon all  
 59 parties; but where it is written above the signature of an  
 60 endorser it binds ~~him~~ the endorser only. \*

336#03-601

61 336.3-601 DISCHARGE OF PARTIES.

62 (1) The extent of the discharge of any party from liability  
 63 on an instrument is governed by the sections on

64 (a) payment or satisfaction (section 336.3-603); or

65 (b) tender of payment (section 336.3-604); or

66 (c) cancellation or renunciation (section 336.3-605); or

67 (d) impairment of right of recourse or of collateral  
 68 (section 336.3-606); or

69 (e) reacquisition of the instrument by a prior party  
 70 (section 336.3-208); or

71 (f) fraudulent and material alteration (section 336.3-407);

72 or

73 (g) certification of a check (section 336.3-411); or

74 (h) acceptance varying a draft (section 336.3-412); or

1 (i) unexcused delay in presentment or notice of dishonor or  
2 protest (section 336.3-202).

3 (2) Any party is also discharged from his liability on an \*  
4 instrument to another party by any other act or agreement with \*  
5 such party which would discharge his the former's simple  
6 contract for the payment of money.

7 (3) The liability of all parties is discharged when any \*  
8 party who has himself no right of action or recourse on the \*  
9 instrument

10 (a) reacquires the instrument in his the reacquiring \*  
11 person's own right; or \*

12 (b) is discharged under any provision of this article,  
13 except as otherwise provided with respect to discharge for  
14 impairment of recourse or of collateral (section 336.3-606).

336#03-602

15 336.3-602 EFFECT OF DISCHARGE AGAINST HOLDER IN DUE  
16 COURSE.

17 No discharge of any party provided by this article is \*  
18 effective against a subsequent holder in due course unless he \*  
19 the holder has notice thereof when he ~~takes~~ taking the  
20 instrument.

336#03-603

21 336.3-603 PAYMENT OR SATISFACTION.

22 (1) The liability of any party is discharged to the extent \*  
23 of his the party's payment or satisfaction to the holder even \*  
24 though it is made with knowledge of a claim of another person to  
25 the instrument unless prior to such payment or satisfaction the  
26 person making the claim either supplies indemnity deemed  
27 adequate by the party seeking the discharge or enjoins payment  
28 or satisfaction by order of a court of competent jurisdiction in  
29 an action in which the adverse claimant and the holder are  
30 parties. This subsection does not, however, result in the  
31 discharge of the liability

32 (a) of a party who in bad faith pays or satisfies a holder  
33 who acquired the instrument by theft or who (unless having the  
34 rights of a holder in due course) holds through one who so  
35 acquired it; or

36 (b) of a party (other than an intermediary bank or a payor  
37 bank which is not a depository bank) who pays or satisfies the  
38 holder of an instrument which has been restrictively endorsed in  
39 a manner not consistent with the terms of such restrictive  
40 endorsement.

41 (2) Payment or satisfaction may be made with the consent of  
42 the holder by any person including a stranger to the instrument.  
43 Surrender of the instrument to such a person gives him that \*  
44 person the rights of a transferee (section 336.3-201). \*

336#03-605

45 336.3-605 CANCELLATION AND RENUNCIATION.

46 (1) The holder of an instrument may even without  
47 consideration discharge any party

48 (a) in any manner apparent on the face of the instrument or  
49 the endorsement, as by intentionally cancelling the instrument  
50 or the party's signature by destruction or mutilation, or by  
51 striking out the party's signature; or

52 (b) by renouncing his the holder's rights by a writing \*  
53 signed and delivered or by surrender of the instrument to the \*  
54 party to be discharged.

55 (2) Neither cancellation nor renunciation without surrender  
56 of the instrument affects the title thereto.

336#03-606

57 336.3-606 IMPAIRMENT OF RECOURSE OR OF COLLATERAL.

58 (1) The holder discharges any party to the instrument to  
59 the extent that without such party's consent the holder

60 (a) without express reservation of rights releases or  
61 agrees not to sue any person against whom the party has to the  
62 knowledge of the holder a right of recourse or agrees to suspend  
63 the right to enforce against such person the instrument or  
64 collateral or otherwise discharges such person, except that  
65 failure or delay in effecting any required presentment, protest  
66 or notice of dishonor with respect to any such person does not  
67 discharge any party as to whom presentment, protest or notice of  
68 dishonor is effective or unnecessary; or

69 (b) unjustifiably impairs any collateral for the instrument \*  
70 given by or on behalf of the party or any person against whom he \*  
71 the party has a right of recourse. \*

72 (2) By express reservation of rights against a party with a

1 right of recourse the holder preserves

2 (a) all ~~his~~ the holder's rights against such party as of \*  
3 the time when the instrument was originally due; and

4 (b) the right of the party to pay the instrument as of that  
5 time; and

6 (c) all rights of such party to recourse against others.

336#03-802

7 336.3-802 EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH  
8 IT IS GIVEN.

9 (1) Unless otherwise agreed where an instrument is taken  
10 for an underlying obligation

11 (a) the obligation is pro tanto discharged if a bank is  
12 drawer, maker or acceptor of the instrument and there is no  
13 recourse on the instrument against the underlying obligor; and

14 (b) in any other case the obligation is suspended pro tanto  
15 until the instrument is due or if it is payable on demand until  
16 its presentment. If the instrument is dishonored action may be  
17 maintained on either the instrument or the obligation; discharge  
18 of the underlying obligor on the instrument also discharges ~~him~~ \*  
19 that obligor on the obligation. \*

20 (2) The taking in good faith of a check which is not  
21 postdated does not of itself so extend the time on the original  
22 obligation as to discharge a surety.

336#03-803

23 336.3-803 NOTICE TO THIRD PARTY.

24 Where a defendant is sued for breach of an obligation for  
25 which a third person is answerable over under this article ~~he~~ \*  
26 the defendant may give the third person written notice of the \*  
27 litigation, and the person notified may then give similar notice  
28 to any other person who is answerable over to ~~him~~ the third \*  
29 person under this article. If the notice states that the person \*  
30 notified may come in and defend and that if the person notified  
31 does not do so ~~he~~ such a person will in any action against ~~him~~ \*  
32 the person notified by the person giving the notice be bound by \*  
33 any determination of fact common to the two litigations, then  
34 unless after reasonable receipt of the notice the person  
35 notified does come in and defend ~~he~~ such a person is so bound. \*

336#03-804

36 336.3-804 LOST, DESTROYED OR STOLEN INSTRUMENTS.

37 The owner of an instrument which is lost, whether by  
38 destruction, theft or otherwise, may maintain an action in ~~his~~ \*  
39 own the owner's name and recover from any party liable thereon \*  
40 upon due proof of ~~his~~ ownership, the facts which prevent ~~his~~ the \*  
41 owner's production of the instrument and its terms. The court \*  
42 may require security indemnifying the defendant against loss by  
43 reason of further claims on the instrument.

336#04-205

44 336.4-205 SUPPLYING MISSING ENDORSEMENT; NO NOTICE FROM  
45 PRIOR ENDORSEMENT.

46 (1) A depositary bank which has taken an item for  
47 collection may supply any endorsement of the customer which is  
48 necessary to title unless the item contains the words "payee's  
49 endorsement required" or the like. In the absence of such a  
50 requirement a statement placed on the item by the depositary  
51 bank to the effect that the item was deposited by a customer or  
52 credited to ~~his~~ the customer's account is effective as the \*  
53 customer's endorsement.

54 (2) An intermediary bank, or payor bank which is not a  
55 depositary bank, is neither given notice nor otherwise affected  
56 by a restrictive endorsement of any person except the bank's  
57 immediate transferor.

336#04-207

58 336.4-207 WARRANTIES OF CUSTOMER AND COLLECTING BANK ON  
59 TRANSFER OR PRESENTMENT OF ITEMS; TIME FOR CLAIMS.

60 (1) Each customer or collecting bank who obtains payment or  
61 acceptance of an item and each prior customer and collecting  
62 bank warrants to the payor bank or other payor who in good faith  
63 pays or accepts the item that

64 (a) ~~he~~ it has a good title to the item or is authorized to \*  
65 obtain payment or acceptance on behalf of one who has a good  
66 title; and

67 (b) ~~he~~ it has no knowledge that the signature of the maker \*  
68 or drawer is unauthorized, except that this warranty is not  
69 given by any customer or collecting bank that is a holder in due  
70 course and acts in good faith

71 (i) to a maker with respect to the maker's own signature;

1 or

2 (ii) to a drawer with respect to the drawer's own  
3 signature, whether or not the drawer is also the drawee; or  
4 (iii) to an acceptor of an item if the holder in due course  
5 took the item after the acceptance or obtained the acceptance  
6 without knowledge that the drawer's signature was unauthorized;  
7 and

8 (c) the item has not been materially altered, except that  
9 this warranty is not given by any customer or collecting bank  
10 that is a holder in due course and acts in good faith

11 (i) to the maker of a note; or

12 (ii) to the drawer of a draft whether or not the drawer is  
13 also the drawee; or

14 (iii) to the acceptor of an item with respect to an  
15 alteration made prior to the acceptance if the holder in due  
16 course took the item after the acceptance, even though the  
17 acceptance provided "payable as originally drawn" or equivalent  
18 terms; or

19 (iv) to the acceptor of an item with respect to an  
20 alteration made after the acceptance.

21 (2) Each customer and collecting bank who transfers an item  
22 and receives a settlement or other consideration for it warrants  
23 to ~~his~~ its transferee and to any subsequent collecting bank who  
24 takes the item in good faith that

25 (a) ~~he~~ it has a good title to the item or is authorized to  
26 obtain payment or acceptance on behalf of one who has a good  
27 title and the transfer is otherwise rightful; and

28 (b) all signatures are genuine or authorized; and

29 (c) the item has not been materially altered; and

30 (d) no defense of any party is good against ~~him~~ it; and

31 (e) ~~he~~ it has no knowledge of any insolvency proceeding  
32 instituted with respect to the maker or acceptor or the drawer  
33 of an unaccepted item.

34 In addition each customer and collecting bank so  
35 transferring an item and receiving a settlement or other  
36 consideration engages that upon dishonor and any necessary  
37 notice of dishonor and protest ~~he~~ it will take up the item.

38 (3) The warranties and the engagement to honor set forth in  
39 the two preceding subsections arise notwithstanding the absence  
40 of endorsement or words of guaranty or warranty in the transfer  
41 or presentment and a collecting bank remains liable for their  
42 breach despite remittance to its transferor. Damages for breach  
43 of such warranties or engagement to honor shall not exceed the  
44 consideration received by the customer or collecting bank  
45 responsible plus finance charges and expenses related to the  
46 item, if any.

47 (4) Unless a claim for breach of warranty under this  
48 section is made within a reasonable time after the person  
49 claiming learns of the breach, the person liable is discharged  
50 to the extent of any loss caused by the delay in making claim.

336#04-210

51 336.4-210 PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,  
52 THROUGH OR AT A BANK; LIABILITY OF SECONDARY PARTIES.

53 (1) Unless otherwise instructed, a collecting bank may  
54 present an item not payable by, through or at a bank by sending  
55 to the party to accept or pay a written notice that the bank  
56 holds the item for acceptance or payment. The notice must be  
57 sent in time to be received on or before the day when  
58 presentment is due and the bank must meet any requirement of the  
59 party to accept or pay under section 336.3-505 by the close of  
60 the bank's next banking day after it knows of the requirement.

61 (2) Where presentment is made by notice and neither honor  
62 nor request for compliance with a requirement under section  
63 336.3-505 is received by the close of business on the day after  
64 maturity or in the case of demand items by the close of business  
65 on the third banking day after notice was sent, the presenting  
66 bank may treat the item as dishonored and charge any secondary  
67 party by sending ~~him~~ the secondary party notice of the facts.

336#04-301

68 336.4-301 DEFERRED POSTING; RECOVERY OF PAYMENT BY  
69 RETURN OF ITEMS; TIME OF DISHONOR.

70 (1) Where an authorized settlement for a demand item (other  
71 than a documentary draft) received by a payor bank otherwise  
72 than for immediate payment over the counter has been made before  
73 midnight of the banking day of receipt the payor bank may revoke  
74 the settlement and recover any payment if before it has made

1 final payment (subsection (1) of section 336.4-213) and before  
 2 its midnight deadline it  
 3 (a) returns the item; or  
 4 (b) sends written notice of dishonor or nonpayment if the  
 5 item is held for protest or is otherwise unavailable for return.  
 6 (2) If a demand item is received by a payor bank for credit  
 7 on its books it may return such item or send notice of dishonor  
 8 and may revoke any credit given or recover the amount thereof  
 9 withdrawn by its customer, if it acts within the time limit and  
 10 in the manner specified in the preceding subsection.  
 11 (3) Unless previous notice of dishonor has been sent an  
 12 item is dishonored at the time when for purposes of dishonor it  
 13 is returned or notice sent in accordance with this section.

14 (4) An item is returned:  
 15 (a) As to an item received through a clearinghouse, when it  
 16 is delivered to the presenting or last collecting bank or to the  
 17 clearinghouse or is sent or delivered in accordance with its  
 18 rules; or  
 19 (b) In all other cases, when it is sent or delivered to the  
 20 bank's customer or transferor or pursuant to ~~his~~ either's  
 21 instructions. \*

336#04-401

22 336.4-401 WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

23 (1) As against its customer, a bank may charge against ~~his~~ \*  
 24 the customer's account any item which is otherwise properly \*  
 25 payable from that account even though the charge creates an  
 26 overdraft.

27 (2) A bank which in good faith makes payment to a holder  
 28 may charge the indicated account of its customer according to

29 (a) the original tenor of ~~his~~ the customer's altered item; \*  
 30 or

31 (b) the tenor of ~~his~~ the customer's completed item, even \*  
 32 though the bank knows the item has been completed unless the  
 33 bank has notice that the completion was improper.

336#04-403

34 336.4-403 CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF  
35 PROOF OF LOSS.

36 (1) A customer may by order to ~~his~~ the customer's bank stop \*  
 37 payment of any item payable for ~~his~~ the customer's account but \*  
 38 the order must be received at such time and in such manner as to  
 39 afford the bank a reasonable opportunity to act on it prior to  
 40 any action by the bank with respect to the item described in  
 41 section 336.4-303.

42 (2) An oral order is binding upon the bank only for 14  
 43 calendar days unless confirmed in writing within that period. A  
 44 written order is effective for only six months unless renewed in  
 45 writing.

46 (3) The burden of establishing the fact and amount of loss  
 47 resulting from the payment of an item contrary to a binding stop  
 48 payment order is on the customer.

336#04-406

49 336.4-406 CUSTOMER'S DUTY TO DISCOVER AND REPORT  
50 UNAUTHORIZED SIGNATURE OR ALTERATION.

51 (1) When a bank sends to its customer a statement of  
 52 account accompanied by items paid in good faith in support of  
 53 the debit entries or holds the statement and items pursuant to a  
 54 request or instructions of its customer or otherwise in a  
 55 reasonable manner makes the statement and items available to the  
 56 customer, the customer must exercise reasonable care and  
 57 promptness to examine the statement and items to discover ~~his~~ \*  
 58 the customer's unauthorized signature or any alteration on an \*  
 59 item and must notify the bank promptly after discovery thereof.

60 (2) If the bank establishes that the customer failed with  
 61 respect to an item to comply with the duties imposed on the  
 62 customer by subsection (1) the customer is precluded from  
 63 asserting against the bank

64 (a) ~~his~~ the customer's unauthorized signature or any \*  
 65 alteration on the item if the bank also establishes that it  
 66 suffered a loss by reason of such failure; and

67 (b) an unauthorized signature or alteration by the same \*  
 68 wrongdoer on any other item paid in good faith by the bank after  
 69 the first item and statement was available to the customer for a  
 70 reasonable period not exceeding 14 calendar days and before the  
 71 bank receives notification from the customer of any such  
 72 unauthorized signature or alteration.

73 (3) The preclusion under subsection (2) does not apply if

1 the customer establishes lack of ordinary care on the part of  
2 the bank in paying the item(s).

3 (4) Without regard to care or lack of care of either the  
4 customer or the bank a customer who does not within one year  
5 from the time the statement and items are made available to the  
6 customer (subsection (1)) discover and report his the customer's \*  
7 unauthorized signature or any alteration on the face or back of  
8 the item or does not within three years from that time discover  
9 and report any unauthorized endorsement is precluded from  
10 asserting against the bank such unauthorized signature or  
11 endorsement or such alteration.

12 (5) If under this section a payor bank has a valid defense  
13 against a claim of a customer upon or resulting from payment of  
14 an item and waives or fails upon request to assert the defense  
15 the bank may not assert against any collecting bank or other  
16 prior party presenting or transferring the item a claim based  
17 upon the unauthorized signature or alteration giving rise to the  
18 customer's claim.

336#04-503

19 336.4-503 RESPONSIBILITY OF PRESENTING BANK FOR  
20 DOCUMENTS AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN  
21 CASE OF NEED.

22 Unless otherwise instructed and except as provided in  
23 article 5 a bank presenting a documentary draft

24 (a) must deliver the documents to the drawee on acceptance  
25 of the draft if it is payable more than three days after  
26 presentment; otherwise, only on payment; and

27 (b) upon dishonor, either in the case of presentment for  
28 acceptance or presentment for payment, may seek and follow  
29 instructions from any referee in case of need designated in the  
30 draft or if the presenting bank does not choose to utilize his \*  
31 the referee's services it must use diligence and good faith to \*  
32 ascertain the reason for dishonor, must notify its transferor of  
33 the dishonor and of the results of its effort to ascertain the  
34 reasons therefor and must request instructions.

35 But the presenting bank is under no obligation with respect  
36 to goods represented by the documents except to follow any  
37 reasonable instructions seasonably received; it has a right to  
38 reimbursement for any expense incurred in following instructions  
39 and to prepayment of or indemnity for such expenses.

336#05-106

40 336.5-106 TIME AND EFFECT OF ESTABLISHMENT OF CREDIT.

41 (1) Unless otherwise agreed a credit is established

42 (a) as regards the customer as soon as a letter of credit  
43 is sent to him the customer or the letter of credit or an \*  
44 authorized written advice of its issuance is sent to the  
45 beneficiary; and

46 (b) as regards the beneficiary when he the beneficiary \*  
47 receives a letter of credit or an authorized written advice of  
48 its issuance.

49 (2) Unless otherwise agreed once an irrevocable credit is  
50 established as regards the customer it can be modified or  
51 revoked only with the consent of the customer and once it is  
52 established as regards the beneficiary it can be modified or  
53 revoked only with his the beneficiary's consent. \*

54 (3) Unless otherwise agreed after a revocable credit is  
55 established it may be modified or revoked by the issuer without  
56 notice to or consent from the customer or beneficiary.

57 (4) Notwithstanding any modification or revocation of a  
58 revocable credit any person authorized to honor or negotiate  
59 under the terms of the original credit is entitled to  
60 reimbursement for or honor of any draft or demand for payment  
61 duly honored or negotiated before receipt of notice of the  
62 modification or revocation and the issuer in turn is entitled to  
63 reimbursement from its customer.

336#05-108

64 336.5-108 "NOTATION CREDIT"; EXHAUSTION OF CREDIT.

65 (1) A credit which specifies that any person purchasing or  
66 paying drafts drawn or demands for payment made under it must  
67 note the amount of the draft or demand on the letter or advice  
68 of credit is a "notation credit."

69 (2) Under a notation credit

70 (a) a person paying the beneficiary or purchasing a draft  
71 or demand for payment from him the beneficiary acquires a right \*  
72 to honor only if the appropriate notation is made and by  
73 transferring or forwarding for honor the documents under the

1 credit such a person warrants to the issuer that the notation  
2 has been made; and

3 (b) unless the credit or a signed statement that an  
4 appropriate notation has been made accompanies the draft or  
5 demand for payment the issuer may delay honor until evidence of  
6 notation has been procured which is satisfactory to it but its  
7 obligation and that of its customer continue for a reasonable  
8 time not exceeding 30 days to obtain such evidence.

9 (3) If the credit is not a notation credit

10 (a) the issuer may honor complying drafts or demands for  
11 payment presented to it in the order in which they are presented  
12 and is discharged pro tanto by honor of any such draft or demand;

13 (b) as between competing good faith purchasers of complying  
14 drafts or demands the person first purchasing has priority over  
15 a subsequent purchaser even though the later purchased draft or  
16 demand has been first honored.

336#05-112

17 336.5-112 TIME ALLOWED FOR HONOR OR REJECTION;

18 WITHHOLDING HONOR OR REJECTION BY CONSENT; "PRESENTER".

19 (1) A bank to which a documentary draft or demand for  
20 payment is presented under a credit may without dishonor of the  
21 draft, demand or credit

22 (a) defer honor until the close of the third banking day  
23 following receipt of the documents; and

24 (b) further defer honor if the presenter has expressly or  
25 impliedly consented thereto.

26 Failure to honor within the time here specified constitutes  
27 dishonor of the draft or demand and of the credit except as  
28 otherwise provided in subsection (4) of section 336.5-114 on  
29 conditional payment.

30 (2) Upon dishonor the bank may unless otherwise instructed  
31 fulfill its duty to return the draft or demand and the documents  
32 by holding them at the disposal of the presenter and sending him  
33 the presenter an advice to that effect. \*  
\*

34 (3) "Presenter" means any person presenting a draft or  
35 demand for payment for honor under a credit even though that  
36 person is a confirming bank or other correspondent which is  
37 acting under an issuer's authorization.

336#05-113

38 336.5-113 INDEMNITIES.

39 (1) A bank seeking to obtain (whether for itself or  
40 another) honor, negotiation or reimbursement under a credit may  
41 give an indemnity to induce such honor, negotiation or  
42 reimbursement.

43 (2) An indemnity agreement inducing honor, negotiation or  
44 reimbursement

45 (a) unless otherwise explicitly agreed applies to defects  
46 in the documents but not in the goods; and

47 (b) unless a longer time is explicitly agreed expires at  
48 the end of ten business days following receipt of the documents  
49 by the ultimate customer unless notice of objection is sent  
50 before such expiration date. The ultimate customer may send  
51 notice of objection to the person from whom he the ultimate  
52 customer received the documents and any bank receiving such \*  
53 notice is under a duty to send notice to its transferor before \*  
54 its midnight deadline.

336#05-115

55 336.5-115 REMEDY FOR IMPROPER DISHONOR OR ANTICIPATORY  
56 REPUDIATION.

57 (1) When an issuer wrongfully dishonors a draft or demand  
58 for payment presented under a credit the person entitled to  
59 honor has with respect to any documents the rights of a person  
60 in the position of a seller (section 336.2-707) and may recover  
61 from the issuer the face amount of the draft or demand together  
62 with incidental damages under section 336.2-710 on seller's  
63 incidental damages and interest but less any amount realized by  
64 resale or other use or disposition of the subject matter of the  
65 transaction. In the event no resale or other utilization is  
66 made the documents, goods or other subject matter involved in  
67 the transaction must be turned over to the issuer on payment of  
68 judgment.

69 (2) When an issuer wrongfully cancels or otherwise  
70 repudiates a credit before presentment of a draft or demand for  
71 payment drawn under it the beneficiary has the rights of a  
72 seller after anticipatory repudiation by the buyer under section  
73 336.2-610 if he the beneficiary learns of the repudiation in \*



1 time reasonable to avoid procurement of the required documents.  
 2 Otherwise the beneficiary has an immediate right of action for  
 3 wrongful dishonor.

336#05-116

4 336.5-116 TRANSFER AND ASSIGNMENT.

5 (1) The right to draw under a credit can be transferred or  
 6 assigned only when the credit is expressly designated as  
 7 transferable or assignable.

8 (2) Even though the credit specifically states that it is  
 9 nontransferable or nonassignable the beneficiary may before  
 10 performance of the conditions of the credit assign ~~his~~ the \*  
 11 beneficiary's right to proceeds. Such an assignment is an \*  
 12 assignment of an account under article 9 on secured transactions  
 13 and is governed by that article except that

14 (a) the assignment is ineffective until the letter of  
 15 credit or advice of credit is delivered to the assignee which  
 16 delivery constitutes perfection of the security interest under  
 17 article 9; and

18 (b) the issuer may honor drafts or demands for payment  
 19 drawn under the credit until it receives a notification of the  
 20 assignment signed by the beneficiary which reasonably identifies  
 21 the credit involved in the assignment and contains a request to  
 22 pay the assignee; and

23 (c) after what reasonably appears to be such a notification  
 24 has been received the issuer may without dishonor refuse to  
 25 accept or pay even to a person otherwise entitled to honor until  
 26 the letter of credit or advice of credit is exhibited to the  
 27 issuer.

28 (3) Except where the beneficiary has effectively assigned  
 29 ~~his~~ the beneficiary's right to draw or ~~his~~ right to proceeds, \*  
 30 nothing in this section limits ~~his~~ the beneficiary's right to \*  
 31 transfer or negotiate drafts or demands drawn under the credit.

336#06-103

32 336.6-103 TRANSFERS EXCEPTED FROM THIS ARTICLE.

33 The following transfers are not subject to this article:

34 (1) Those made to give security for the performance of an  
 35 obligation;

36 (2) General assignments for the benefit of all the  
 37 creditors of the transferor, and subsequent transfers by the  
 38 assignee thereunder;

39 (3) Transfers in settlement or realization of a lien or  
 40 other security interest;

41 (4) Sales by executors, administrators, receivers, trustees  
 42 in bankruptcy, or any public officer under judicial process;

43 (5) Sales made in the course of judicial or administrative  
 44 proceedings for the dissolution or reorganization of a  
 45 corporation and of which notice is sent to the creditors of the  
 46 corporation pursuant to order of the court or administrative  
 47 agency;

48 (6) Transfers to a person maintaining a known place of  
 49 business in this state who becomes bound to pay the debts of the  
 50 transferor in full and gives public notice of that fact, and who  
 51 is solvent after becoming so bound;

52 (7) A transfer to a new business enterprise organized to  
 53 take over and continue the business, if public notice of the  
 54 transaction is given and the new enterprise assumes the debts of  
 55 the transferor ~~and he, who~~ receives nothing from the transaction \*  
 56 except an interest in the new enterprise junior to the claims of  
 57 creditors;

58 (8) Transfers of property which is exempt from execution.

59 Public notice under subsection (6) or subsection (7) may be  
 60 given by publishing once a week for two consecutive weeks in a  
 61 newspaper of general circulation where the transferor had its  
 62 principal place of business in this state an advertisement  
 63 including the names and addresses of the transferor and  
 64 transferee and the effective date of the transfer.

336#06-104

65 336.6-104 SCHEDULE OF PROPERTY, LIST OF CREDITORS.

66 (1) Except as provided with respect to auction sales  
 67 (section 336.6-108), a bulk transfer subject to this article is  
 68 ineffective against any creditor of the transferor unless:

69 (a) The transferee requires the transferor to furnish a  
 70 list of ~~his~~ the transferor's existing creditors prepared as \*  
 71 stated in this section; and

72 (b) The parties prepare a schedule of the property  
 73 transferred sufficient to identify it; and

1 (c) The transferee preserves the list and schedule for six  
2 months next following the transfer and permits inspection of  
3 either or both and copying therefrom at all reasonable hours by  
4 any creditor of the transferor, or files the list and schedule  
5 in the office of the secretary of state.

6 (2) The list of creditors must be signed and sworn to or  
7 affirmed by the transferor or ~~his~~ the transferor's agent. It \*  
8 must contain the names and business addresses of all creditors  
9 of the transferor, with the amounts when known, and also the  
10 names of all persons who are known to the transferor to assert \*  
11 claims against ~~him~~ the transferor even though such claims are  
12 disputed. If the transferor is the obligor of an outstanding  
13 issue of bonds, debentures or the like as to which there is an  
14 indenture trustee, the list of creditors need include only the  
15 name and address of the indenture trustee and the aggregate  
16 outstanding principal amount of the issue.

17 (3) Responsibility for the completeness and accuracy of the  
18 list of creditors rests on the transferor, and the transfer is  
19 not rendered ineffective by errors or omissions therein unless  
20 the transferee is shown to have had knowledge.

336#06-105

21 336.6-105 NOTICE TO CREDITORS.

22 In addition to the requirements of the preceding section,  
23 any bulk transfer subject to this article except one made by  
24 auction sale (section 336.6-108) is ineffective against any  
25 creditor of the transferor unless at least ten days before ~~he~~ \*  
26 the transferee takes possession of the goods or pays for them, \*  
27 whichever happens first, the transferee gives notice of the  
28 transfer in the manner and to the persons hereafter provided  
29 (section 336.6-107).

336#06-106

30 336.6-106 APPLICATION OF THE PROCEEDS.

31 In addition to the requirements of the two preceding  
32 sections:

33 (1) Upon every bulk transfer subject to this article for  
34 which new consideration becomes payable except those made by  
35 sale at auction it is the duty of the transferee to assure that  
36 the new consideration is applied so far as necessary to pay  
37 those debts of the transferor which are either shown on the list  
38 furnished by the transferor (section 336.6-104) or filed in  
39 writing in the place stated in the notice (section 336.6-107)  
40 within 30 days after the mailing of the notice. This duty of  
41 the transferee runs to all the holders of shown or filed debts,  
42 and may be enforced by any of them for the benefit of all;

43 (2) If any of the debts are in dispute the necessary sum  
44 may be withheld from distribution until the dispute is settled  
45 or adjudicated;

46 (3) If the consideration payable is not enough to pay all  
47 the debts in full, distribution shall be made pro rata unless  
48 there is an agreement among the creditors to distribute the  
49 proceeds on another basis;

50 (4) The transferee may within ten days after ~~he takes~~ \*  
51 taking possession of the goods pay the consideration into the \*  
52 district court in the county where the transferor had its  
53 principal place of business in this state and thereafter may  
54 discharge ~~his-duty~~ duties under this section by giving notice by \*  
55 certified mail to all the persons to whom ~~the a~~ duty runs that \*  
56 the consideration has been paid into that court and that they  
57 should file their claims there. On motion of any interested  
58 party, the court may order the distribution of the consideration  
59 to the persons entitled to it.

336#06-108

60 336.6-108 AUCTION SALES; "AUCTIONEER".

61 (1) A bulk transfer is subject to this article even though  
62 it is by sale at auction, but only in the manner and with the  
63 results stated in this section.

64 (2) The transferor shall furnish a list of ~~his~~ creditors \*  
65 and assist in the preparation of a schedule of the property to  
66 be sold, both prepared as before stated (section 336.6-104).

67 (3) The person or persons other than the transferor who  
68 direct, control or are responsible for the auction are  
69 collectively called the "auctioneer". The auctioneer shall:

70 (a) Receive and retain the list of creditors and prepare  
71 and retain the schedule of property for the period stated in  
72 this article (section 336.6-104);

73 (b) Give notice of the auction personally or by registered

1 or certified mail at least ten days before it occurs to all  
 2 persons shown on the list of creditors and to all other persons  
 3 who are known to ~~him~~ the auctioneer to hold or assert claims  
 4 against the transferor; \*

5 (c) Assure that the net proceeds of the auction are applied  
 6 as provided in this article (section 336.6-106).

7 (4) Failure of the auctioneer to perform any of these  
 8 duties does not affect the validity of the sale or the title of  
 9 the purchasers, but if the auctioneer knows that the auction  
 10 constitutes a bulk transfer such failure renders the auctioneer  
 11 liable to the creditors of the transferor as a class for the  
 12 sums owing to them from the transferor up to but not exceeding  
 13 the net proceeds of the auction. If the auctioneer consists of  
 14 several persons their liability is joint and several.

336#06-110

15 336.6-110 SUBSEQUENT TRANSFERS.

16 When the title of a transferee to property is subject to a  
 17 defect by reason of ~~his~~ the transferee's noncompliance with the  
 18 requirements of this article, then: \*

19 (1) A purchaser of any of such property from such  
 20 transferee who pays no value or who takes with notice of such  
 21 noncompliance takes subject to such defect, but

22 (2) A purchaser for value in good faith and without such  
 23 notice takes free of such defect.

336#07-102

24 336.7-102 DEFINITIONS AND INDEX OF DEFINITIONS.

25 (1) In this article, unless the context otherwise requires:

26 (a) "Bailee" means the person who by a warehouse receipt,  
 27 bill of lading or other document of title acknowledges  
 28 possession of goods and contracts to deliver them.

29 (b) "Consignee" means the person named in a bill to whom or  
 30 to whose order the bill promises delivery.

31 (c) "Consignor" means the person named in a bill as the  
 32 person from whom the goods have been received for shipment.

33 (d) "Delivery order" means a written order to deliver goods  
 34 directed to a warehouseman warehouse operator, carrier or other  
 35 person who in the ordinary course of business issues warehouse  
 36 receipts or bills of lading. \*

37 (e) "Document" means document of title as defined in the  
 38 general definitions in article 1 (section 336.1-201).

39 (f) "Goods" means all things which are treated as movable  
 40 for the purposes of a contract of storage or transportation.

41 (g) "Issuer" means a bailee who issues a document except  
 42 that in relation to an unaccepted delivery order it means the  
 43 person who orders the possessor of goods to deliver. Issuer  
 44 includes any person for whom an agent or employee purports to  
 45 act in issuing a document if the agent or employee has real or  
 46 apparent authority to issue documents, notwithstanding that the  
 47 issuer received no goods or that the goods were misdescribed or  
 48 that in any other respect the agent or employee violated ~~his~~  
 49 instructions. \*

50 (h) "Warehouseman Warehouse operator" is a person engaged  
 51 in the business of storing goods for hire. \*

52 (2) Other definitions applying to this article or to  
 53 specified parts thereof, and the sections in which they appear  
 54 are:

55 "Duly negotiate," section 336.7-501.

56 "Person entitled under the document," section 336.7-403(4).

57 (3) Definitions in other articles applying to this article  
 58 and the sections in which they appear are:

59 "Contract for sale," section 336.2-106.

60 "Overseas," section 336.2-323.

61 "Receipt" of goods, section 336.2-103.

62 (4) In addition article 1 contains general definitions and  
 63 principles of construction and interpretation applicable  
 64 throughout this article.

336#07-201

65 336.7-201 WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE  
 66 UNDER GOVERNMENT BOND.

67 (1) A warehouse receipt may be issued by any warehouseman  
 68 warehouse operator. \*

69 (2) Where goods including distilled spirits and  
 70 agricultural commodities are stored under a statute requiring a  
 71 bond against withdrawal or a license for the issuance of  
 72 receipts in the nature of warehouse receipts, a receipt issued  
 73 for the goods has like effect as a warehouse receipt even though

1 issued by a person who is the owner of the goods and is not a  
2 warehouseman warehouse operator. \*

336#07-202

3 336.7-202 FORM OF WAREHOUSE RECEIPT; ESSENTIAL TERMS;  
4 OPTIONAL TERMS.

5 (1) A warehouse receipt need not be in any particular form.

6 (2) Unless a warehouse receipt embodies within its written  
7 or printed terms each of the following, the warehouseman  
8 warehouse operator is liable for damages caused by the omission  
9 to a person injured thereby: \*

10 (a) The location of the warehouse where the goods are  
11 stored;

12 (b) The date of issue of the receipt;

13 (c) The consecutive number of the receipt;

14 (d) A statement whether the goods received will be  
15 delivered to the bearer, to a specified person, or to a  
16 specified person or ~~his~~ the person's order; \*

17 (e) The rate of storage and handling charges, except that  
18 where goods are stored under a field warehousing arrangement a  
19 statement of that fact is sufficient on a non-negotiable receipt;

20 (f) A description of the goods or of the packages  
21 containing them;

22 (g) The signature of the warehouseman warehouse operator,  
23 which may be made by ~~his~~ an authorized agent; \*

24 (h) If the receipt is issued for goods of which the  
25 warehouseman warehouse operator is owner, either solely or  
26 jointly or in common with others, the fact of such ownership;  
27 and \*

28 (i) A statement of the amount of advances made and of  
29 liabilities incurred for which the warehouseman warehouse  
30 operator claims a lien or security interest (section  
31 336.7-209). If the precise amount of such advances made or of  
32 such liabilities incurred is, at the time of the issue of the  
33 receipt, unknown to the warehouseman warehouse operator or to  
34 ~~his~~ the warehouse operator's agent who issues it, a statement of  
35 the fact that advances have been made or liabilities incurred  
36 and the purpose thereof is sufficient. \*

37 (3) A warehouseman warehouse operator may insert in ~~his~~ the  
38 receipt any other terms which are not contrary to the provisions  
39 of this chapter and do not impair ~~his~~ the warehouse operator's  
40 obligation of delivery (section 336.7-403) or ~~his~~ duty of care  
41 (section 336.7-204). Any contrary provisions shall be  
42 ineffective. \*

336#07-204

43 336.7-204 DUTY OF CARE; CONTRACTUAL LIMITATION OF  
44 WAREHOUSEMAN'S WAREHOUSE OPERATOR'S LIABILITY. \*

45 (1) A warehouseman warehouse operator is liable for damages  
46 for loss of or injury to the goods caused by ~~his~~ the operator's  
47 failure to exercise such care in regard to them as a reasonably  
48 careful man person would exercise under like circumstances but  
49 unless otherwise agreed ~~he~~ the warehouse operator is not liable  
50 for damages which could not have been avoided by the exercise of  
51 such care. \*

52 (2) Damages may be limited by a term in the warehouse  
53 receipt or storage agreement limiting the amount of liability in  
54 case of loss or damage, and setting forth a specific liability  
55 per article or item, or value per unit of weight, beyond which  
56 the warehouseman warehouse operator shall not be liable;  
57 provided, however, that such liability may on written request of  
58 the bailor at the time of signing such storage agreement or  
59 within a reasonable time after receipt of the warehouse receipt  
60 be increased on part or all of the goods thereunder, in which  
61 event increased rates may be charged based on such increased  
62 valuation, but that no such increase shall be permitted contrary  
63 to a lawful limitation of liability contained in  
64 the warehouseman's warehouse operator's tariff, if any. No such  
65 limitation is effective with respect to the warehouseman's  
66 warehouse operator's liability for conversion to ~~his~~ the  
67 warehouse operator's own use. \*

68 (3) Reasonable provisions as to the time and manner of  
69 presenting claims and instituting actions based on the bailment  
70 may be included in the warehouse receipt or tariff.

336#07-205

71 336.7-205 TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN  
72 CERTAIN CASES.

73 A buyer in the ordinary course of business of fungible

1 goods sold and delivered by a warehouseman warehouse operator \*  
 2 who is also in the business of buying and selling such goods  
 3 takes free of any claim under a warehouse receipt even though it  
 4 has been duly negotiated.

336#07-206

5 336.7-206 TERMINATION OF STORAGE AT WAREHOUSEMAN'S \*  
 6 WAREHOUSE OPERATOR'S OPTION. \*

7 (1) A warehouseman warehouse operator may on notifying the \*  
 8 person on whose account the goods are held and any other person  
 9 known to claim an interest in the goods require payment of any  
 10 charges and removal of the goods from the warehouse at the  
 11 termination of the period of storage fixed by the document, or,  
 12 if no period is fixed, within a stated period not less than 30  
 13 days after the notification. If the goods are not removed  
 14 before the date specified in the notification, the warehouseman \*  
 15 warehouse operator may sell them in accordance with the \*  
 16 provisions of the section on enforcement of a warehouseman's \*  
 17 warehouse operator's lien (section 336.7-210). \*

18 (2) If a warehouseman warehouse operator in good faith \*  
 19 believes that the goods are about to deteriorate or decline in  
 20 value to less than the amount of ~~his~~ the warehouse operator's  
 21 lien within the time prescribed in subsection (1) for  
 22 notification, advertisement and sale, the warehouseman warehouse \*  
 23 operator may specify in the notification any reasonable shorter \*  
 24 time for removal of the goods and in case the goods are not  
 25 removed, may sell them at public sale held not less than one  
 26 week after a single advertisement or posting.

27 (3) If as a result of a quality or condition of the goods \*  
 28 of which the warehouseman warehouse operator had no notice at  
 29 the time of deposit the goods are a hazard to other property or  
 30 to the warehouse or to persons, the warehouseman warehouse \*  
 31 operator may sell the goods at public or private sale without \*  
 32 advertisement on reasonable notification to all persons known to  
 33 claim an interest in the goods. ~~If the warehouseman~~ A warehouse \*  
 34 operator who after a reasonable effort is unable to sell the \*  
 35 goods ~~he~~ may dispose of them in any lawful manner and shall \*  
 36 incur no liability by reason of such disposition.

37 (4) The warehouseman warehouse operator must deliver the \*  
 38 goods to any person entitled to them under this article upon due  
 39 demand made at any time prior to sale or other disposition under  
 40 this section.

41 (5) The warehouseman warehouse operator may satisfy ~~his~~ a \*  
 42 lien from the proceeds of any sale or disposition under this  
 43 section but must hold the balance for delivery on the demand of  
 44 any person to whom ~~he~~ the warehouse operator would have been \*  
 45 bound to deliver the goods.

336#07-207

46 336.7-207 GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.

47 (1) Unless the warehouse receipt otherwise provides, a \*  
 48 warehouseman warehouse operator must keep separate the goods \*  
 49 covered by each receipt so as to permit at all times  
 50 identification and delivery of those goods except that different  
 51 lots of fungible goods may be commingled.

52 (2) Fungible goods so commingled are owned in common by the \*  
 53 persons entitled thereto and the warehouseman warehouse operator \*  
 54 is severally liable to each owner for that owner's share. Where  
 55 because of overissue a mass of fungible goods is insufficient to  
 56 meet all the receipts which the warehouseman warehouse operator \*  
 57 has issued against it, the persons entitled include all holders  
 58 to whom overissued receipts have been duly negotiated.

336#07-209

59 336.7-209 LIEN OF WAREHOUSEMAN WAREHOUSE OPERATOR. \*

60 (1) A warehouseman warehouse operator has a lien against \*  
 61 the bailor on the goods covered by a warehouse receipt or on the  
 62 proceeds thereof in ~~his~~ the warehouse operator's possession for \*  
 63 charges for storage or transportation (including demurrage and  
 64 terminal charges), insurance, labor, or charges present or  
 65 future in relation to the goods, and for expenses necessary for  
 66 preservation of the goods or reasonably incurred in their sale  
 67 pursuant to law. If the person on whose account the goods are  
 68 held is liable for like charges or expenses in relation to other  
 69 goods whenever deposited and it is stated in the receipt that a  
 70 lien is claimed for charges and expenses in relation to other  
 71 goods, the warehouseman warehouse operator also has a lien \*  
 72 against ~~him~~ the person for such charges and expenses whether or \*  
 73 not the other goods have been delivered by the warehouseman \*

1 warehouse operator. But against a person to whom a negotiable \*  
 2 warehouse receipt is duly negotiated a warehouseman's warehouse \*  
 3 operator's lien is limited to charges in an amount or at a rate \*  
 4 specified on the receipt or if no charges are so specified then  
 5 to a reasonable charge for storage of the goods covered by the  
 6 receipt subsequent to the date of the receipt.

7 (2) The warehouseman warehouse operator may also reserve a \*  
 8 security interest against the bailor for a maximum amount  
 9 specified on the receipt for charges other than those specified  
 10 in subsection (1), such as for money advanced and interest.  
 11 Such a security interest is governed by the article on secured  
 12 transactions (article 9).

13 (3) (a) A warehouseman's warehouse operator's lien for \*  
 14 charges and expenses under subsection (1) or a security interest  
 15 under subsection (2) is also effective against any person who so  
 16 entrusted the bailor with possession of the goods that a pledge  
 17 of them by him the bailor to a good faith purchaser for value \*  
 18 would have been valid but is not effective against a person as  
 19 to whom the document confers no right in the goods covered by it  
 20 under section 336.7-503.

21 (b) A warehouseman's warehouse operator's lien on household \*  
 22 goods for charges and expenses in relation to the goods under  
 23 subsection (1) is also effective against all persons if the  
 24 depositor was the legal possessor of the goods at the time of  
 25 deposit. "Household goods" means furniture, furnishings and  
 26 personal effects used by the depositor in a dwelling.

27 (4) A warehouseman warehouse operator loses his a lien on \*  
 28 any goods which he the warehouse operator voluntarily delivers \*  
 29 or which-he unjustifiably refuses to deliver. \*

336#07-210

30 336.7-210 ENFORCEMENT OF WAREHOUSEMAN'S WAREHOUSE \*  
 31 OPERATOR'S LIEN. \*

32 (1) Except as provided in subsection (2), a warehouseman's \*  
 33 warehouse operator's lien may be enforced by public or private \*  
 34 sale of the goods in bloc or in parcels, at any time or place \*  
 35 and on any terms which are commercially reasonable, after  
 36 notifying all persons known to claim an interest in the goods.  
 37 Such notification must include a statement of the amount due,  
 38 the nature of the proposed sale and the time and place of any  
 39 public sale. The fact that a better price could have been  
 40 obtained by a sale at a different time or in a different method  
 41 from that selected by the warehouseman warehouse operator is not \*  
 42 of itself sufficient to establish that the sale was not made in \*  
 43 a commercially reasonable manner. If the warehouseman warehouse \*  
 44 operator either sells the goods in the usual manner in any \*  
 45 recognized market therefor, or if-he sells at the price current \*  
 46 in such market at the time of his sale, or if-he has otherwise \*  
 47 sold in conformity with commercially reasonable practices among \*  
 48 dealers in the type of goods sold, he the warehouse operator has \*  
 49 sold in a commercially reasonable manner. A sale of more goods \*  
 50 than apparently necessary to be offered to insure satisfaction  
 51 of the obligation is not commercially reasonable except in cases  
 52 covered by the preceding sentence.

53 (2) A warehouseman's warehouse operator's lien on goods \*  
 54 other than goods stored by a merchant in the course of his \*  
 55 business may be enforced only as follows:

56 (a) All persons known to claim an interest in the goods  
 57 must be notified.

58 (b) The notification must be delivered in person or sent by  
 59 registered or certified letter to the last known address of any  
 60 person to be notified.

61 (c) The notification must include an itemized statement of  
 62 the claim, a description of the goods subject to the lien, a  
 63 demand for payment within a specified time not less than ten  
 64 days after receipt of the notification, and a conspicuous  
 65 statement that unless the claim is paid within that time the  
 66 goods will be advertised for sale and sold by auction at a  
 67 specified time and place.

68 (d) The sale must conform to the terms of the notification.

69 (e) The sale must be held at the nearest suitable place to  
 70 that where the goods are held or stored.

71 (f) After the expiration of the time given in the  
 72 notification, an advertisement of the sale must be published  
 73 once a week for two weeks consecutively in a newspaper of  
 74 general circulation where the sale is to be held. The  
 75 advertisement must include a description of the goods, the name

1 of the person on whose account they are being held, and the time  
2 and place of the sale. The sale must take place at least 15  
3 days after the first publication. If there is no newspaper of  
4 general circulation where the sale is to be held, the  
5 advertisement must be posted at least ten days before the sale  
6 in not less than six conspicuous places in the neighborhood of  
7 the proposed sale.

8 (3) Before any sale pursuant to this section any person  
9 claiming a right in the goods may pay the amount necessary to  
10 satisfy the lien and the reasonable expenses incurred under this  
11 section. In that event the goods must not be sold, but must be  
12 retained by the warehouseman warehouse operator subject to the  
13 terms of the receipt and this article. \*

14 (4) The warehouseman warehouse operator may buy at any  
15 public sale pursuant to this section. \*

16 (5) A purchaser in good faith of goods sold to enforce a  
17 warehouseman's warehouse operator's lien takes the goods free of  
18 any rights of persons against whom the lien was valid despite  
19 noncompliance by the warehouseman warehouse operator with the  
20 requirements of this section. \*

21 (6) The warehouseman warehouse operator may satisfy his a  
22 lien from the proceeds of any sale pursuant to this section but  
23 must hold the balance, if any, for delivery on demand to any  
24 person to whom he the warehouse operator would have been bound  
25 to deliver the goods. \*

26 (7) The rights provided by this section shall be in  
27 addition to all other rights allowed by law to a creditor  
28 against his the creditor's debtor. \*

29 (8) Where a lien is on goods stored by a merchant in the  
30 course of his business the lien may be enforced in accordance  
31 with either subsection (1) or (2). \*

32 (9) The warehouseman warehouse operator is liable for  
33 damages caused by failure to comply with the requirements for  
34 sale under this section and in case of willful violation is  
35 liable for conversion. \*

336#07-301

36 336.7-301 LIABILITY FOR NONRECEIPT OR MISDESCRIPTION;  
37 "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.

38 (1) A consignee of a non-negotiable bill who has given  
39 value in good faith or a holder to whom a negotiable bill has  
40 been duly negotiated relying in either case upon the description  
41 therein of the goods, or upon the date therein shown, may  
42 recover from the issuer damages caused by the misdating of the  
43 bill or the nonreceipt or misdescription of the goods, except to  
44 the extent that the document indicates that the issuer does not  
45 know whether any part or all of the goods in fact were received  
46 or conform to the description, as where the description is in  
47 terms of marks or labels or kind, quantity, or condition or the  
48 receipt or description is qualified by "contents or condition of  
49 contents of packages unknown," "said to contain," "shipper's  
50 weight, load and count" or the like, if such indication be true.

51 (2) When goods are loaded by an issuer who is a common  
52 carrier, the issuer must count the packages of goods if package  
53 freight and ascertain the kind and quantity if bulk freight. In  
54 such cases "shipper's weight, load and count" or other words  
55 indicating that the description was made by the shipper are  
56 ineffective except as to freight concealed by packages.

57 (3) When bulk freight is loaded by a shipper who makes  
58 available to the issuer adequate facilities for weighing such  
59 freight, an issuer who is a common carrier must ascertain the  
60 kind and quantity within a reasonable time after receiving the  
61 written request of the shipper to do so. In such cases  
62 "shipper's weight" or other words of like purport are  
63 ineffective.

64 (4) The issuer may by inserting in the bill the words  
65 "shipper's weight, load and count" or other words of like  
66 purport indicate that the goods were loaded by the shipper; and  
67 if such statement be true the issuer shall not be liable for  
68 damages caused by the improper loading. But their omission does  
69 not imply liability for such damages.

70 (5) The shipper shall be deemed to have guaranteed to the  
71 issuer the accuracy at the time of shipment of the description,  
72 marks, labels, number, kind, quantity, condition and weight, as  
73 furnished by him the shipper; and the shipper shall indemnify  
74 the issuer against damage caused by inaccuracies in such  
75 particulars. The right of the issuer to such indemnity shall in \*

1 no way limit ~~his~~ the issuer's responsibility and liability under \*  
 2 the contract of carriage to any person other than the shipper.

336#07-302

3 336.7-302 THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.

4 (1) The issuer of a through bill of lading or other  
 5 document embodying an undertaking to be performed in part by  
 6 persons acting as its agents or by connecting carriers is liable  
 7 to anyone entitled to recover on the document for any breach by  
 8 such other persons or by a connecting carrier of its obligation  
 9 under the document but to the extent that the bill covers an  
 10 undertaking to be performed overseas or in territory not  
 11 contiguous to the United States or an undertaking including  
 12 matters other than transportation this liability may be varied  
 13 by agreement of the parties.

14 (2) Where goods covered by a through bill of lading or  
 15 other document embodying an undertaking to be performed in part  
 16 by persons other than the issuer are received by any such  
 17 person, ~~he~~ the receiver is subject with respect to ~~his~~ the \*  
 18 receiver's own performance while possessing the goods ~~are-in-his~~ \*  
 19 possession to the obligation of the issuer. ~~His~~ The obligation \*  
 20 is discharged by delivery of the goods to another such person  
 21 pursuant to the document, and does not include liability for  
 22 breach by any other such persons or by the issuer.

23 (3) The issuer of such through bill of lading or other  
 24 document shall be entitled to recover from the connecting  
 25 carrier or such other person in possession of the goods when the  
 26 breach of the obligation under the document occurred, the amount  
 27 it may be required to pay to anyone entitled to recover on the  
 28 document therefor, as may be evidenced by any receipt, judgment,  
 29 or transcript thereof, and the amount of any expense reasonably  
 30 incurred by it in defending any action brought by anyone  
 31 entitled to recover on the document therefor.

336#07-303

32 336.7-303 DIVERSION; RECONSIGNMENT; CHANGE OF  
 33 INSTRUCTIONS.

34 (1) Unless the bill of lading otherwise provides, the  
 35 carrier may deliver the goods to a person or destination other  
 36 than that stated in the bill or may otherwise dispose of the  
 37 goods on instructions from

38 (a) the holder of a negotiable bill; or

39 (b) the consignor on a non-negotiable bill notwithstanding  
 40 contrary instructions from the consignee; or

41 (c) the consignee on a non-negotiable bill in the absence  
 42 of contrary instructions from the consignor, if the goods have  
 43 arrived at the billed destination or if the consignee is in  
 44 possession of the bill; or

45 (d) the consignee on a non-negotiable bill if ~~he~~ the \*  
 46 consignee is entitled as against the consignor to dispose of \*  
 47 them.

48 (2) Unless such instructions are noted on a negotiable bill  
 49 of lading, a person to whom the bill is duly negotiated can hold  
 50 the bailee according to the original terms.

336#07-304

51 336.7-304 BILLS OF LADING IN A SET.

52 (1) Except where customary in overseas transportation, a  
 53 bill of lading must not be issued in a set of parts. The issuer  
 54 is liable for damages caused by violation of this subsection.

55 (2) Where a bill of lading is lawfully drawn in a set of  
 56 parts, each of which is numbered and expressed to be valid only  
 57 if the goods have not been delivered against any other part, the  
 58 whole of the parts constitute one bill.

59 (3) Where a bill of lading is lawfully issued in a set of  
 60 parts and different parts are negotiated to different persons,  
 61 the title of the holder to whom the first due negotiation is  
 62 made prevails as to both the document and the goods even though  
 63 any later holder may have received the goods from the carrier in  
 64 good faith and discharged the carrier's obligation by surrender  
 65 of ~~his~~ the later holder's part. \*

66 (4) Any person who negotiates or transfers a single part of  
 67 a bill of lading drawn in a set is liable to holders of that  
 68 part as if it were the whole set.

69 (5) The bailee is obliged to deliver in accordance with  
 70 part 4 of this article against the first presented part of a  
 71 bill of lading lawfully drawn in a set. Such delivery  
 72 discharges the bailee's obligation on the whole bill.

336#07-307



336.7-307 LIEN OF CARRIER.

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses ~~his~~ a lien on any goods which ~~he~~ the carrier voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

\*  
\*

336#07-308

336.7-308 ENFORCEMENT OF CARRIER'S LIEN.

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or ~~if he~~ sells at the price current in such market at the time of ~~his~~ sale or ~~if he~~ has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold ~~he~~ the carrier has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

\*  
\*  
\*  
\*

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy ~~his~~ a lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom ~~he~~ the carrier would have been bound to deliver the goods.

\*  
\*

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against ~~his~~ the creditor's debtor.

\*

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 336.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

336#07-309

336.7-309 DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful ~~man~~ person would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes

\*

1 liability upon a common carrier for damages not caused by its  
2 negligence.

3 (2) Damages may be limited by a provision that the  
4 carrier's liability shall not exceed a value stated in the  
5 document if the carrier's rates are dependent upon value and the  
6 consignor by the carrier's tariff is afforded an opportunity to  
7 declare a higher value or a value as lawfully provided in the  
8 tariff, or where no tariff is filed he the consignor is \*  
9 otherwise advised of such opportunity; but no such limitation is  
10 effective with respect to the carrier's liability for conversion  
11 to its own use.

12 (3) Reasonable provisions as to the time and manner of  
13 presenting claims and instituting actions based on the shipment  
14 may be included in a bill of lading or tariff.

336#07-401

15 336.7-401 IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR  
16 CONDUCT OF ISSUER.

17 The obligations imposed by this article on an issuer apply  
18 to a document of title regardless of the fact that

19 (a) the document may not comply with the requirements of  
20 this article or of any other law or regulation regarding its  
21 issue, form or content; or

22 (b) the issuer may have violated laws regulating the  
23 conduct of ~~his~~ business; or \*

24 (c) the goods covered by the document were owned by the  
25 bailee at the time the document was issued; or

26 (d) the person issuing the document does not come within  
27 the definition of warehouseman warehouse operator if it purports \*  
28 to be a warehouse receipt.

336#07-402

29 336.7-402 DUPLICATE RECEIPT OR BILL; OVERISSUE.

30 Neither a duplicate nor any other document of title  
31 purporting to cover goods already represented by an outstanding  
32 document of the same issuer confers any right in the goods,  
33 except as provided in the case of bills in a set, overissue of  
34 documents for fungible goods and substitutes for lost, stolen or  
35 destroyed documents. But the issuer is liable for damages  
36 caused by ~~his~~ the issuer's overissue or failure to identify a \*  
37 duplicate document as such by conspicuous notation on its face.

336#07-403

38 336.7-403 OBLIGATION OF WAREHOUSEMAN WAREHOUSE OPERATOR \*  
39 OR CARRIER TO DELIVER; EXCUSE.

40 (1) The bailee must deliver the goods to a person entitled  
41 under the document who complies with subsections (2) and (3),  
42 unless and to the extent that the bailee establishes any of the  
43 following:

44 (a) Delivery of the goods to a person whose receipt was  
45 rightful as against the claimant;

46 (b) Damage to or delay, loss or destruction of the goods  
47 for which the bailee is not liable;

48 (c) Previous sale or other disposition of the goods in  
49 lawful enforcement of a lien or on warehouseman's warehouse \*  
50 operator's lawful termination of storage; \*

51 (d) The exercise by a seller of ~~his~~ the right to stop \*  
52 delivery pursuant to the provisions of ~~his~~ the article on sales  
53 (section 336.2-705);

54 (e) A diversion, reconsignment or other disposition  
55 pursuant to the provisions of this article (section 336.7-303)  
56 or tariff regulating such right;

57 (f) Release, satisfaction or any other fact affording a  
58 personal defense against the claimant;

59 (g) Any other lawful excuse.

60 (2) A person claiming goods covered by a document of title  
61 must satisfy the bailee's lien where the bailee so requests or  
62 where the bailee is prohibited by law from delivering the goods  
63 until the charges are paid.

64 (3) Unless the person claiming is one against whom the  
65 document confers no right under section 336.7-503(1), he the \*  
66 person must surrender for cancellation or notation of partial \*  
67 deliveries any outstanding negotiable document covering the  
68 goods, and the bailee must cancel the document or conspicuously  
69 note the partial delivery thereon or be liable to any person to  
70 whom the document is duly negotiated.

71 (4) "Person entitled under the document" means the holder  
72 in the case of a negotiable document, or the person to whom  
73 delivery is to be made by the terms of or pursuant to written

1 instructions under a non-negotiable document.

336#07-404

2 336.7-404 NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT  
3 TO RECEIPT OR BILL.

4 A bailee who in good faith including observance of  
5 reasonable commercial standards has received goods and delivered  
6 or otherwise disposed of them according to the terms of the  
7 document of title or pursuant to this article is not liable  
8 therefor. This rule applies even though the person from whom he  
9 the bailee received the goods had no authority to procure the  
10 document or to dispose of the goods and even though the person  
11 to whom he the bailee delivered the goods had no authority to  
12 receive them.

336#07-501

13 336.7-501 FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE  
14 NEGOTIATION".

15 (1) A negotiable document of title running to the order of  
16 a named person is negotiated by ~~his~~ the named person's  
17 endorsement and delivery. After ~~his~~ the named person's  
18 endorsement in blank or to bearer any person can negotiate it by  
19 delivery alone.

20 (2) (a) A negotiable document of title is also negotiated  
21 by delivery alone when by its original terms it runs to bearer;

22 (b) when a document running to the order of a named person  
23 is delivered to ~~him~~ the named person the effect is the same as  
24 if the document had been negotiated.

25 (3) Negotiation of a negotiable document of title after it  
26 has been endorsed to a specified person requires endorsement by  
27 the special endorsee as well as delivery.

28 (4) A negotiable document of title is "duly negotiated"  
29 when it is negotiated in the manner stated in this section to a  
30 holder who purchases it in good faith without notice of any  
31 defense against or claim to it on the part of any person and for  
32 value, unless it is established that the negotiation is not in  
33 the regular course of business or financing or involves  
34 receiving the document in settlement or payment of a money  
35 obligation.

36 (5) Endorsement of a non-negotiable document neither makes  
37 it negotiable nor adds to the transferee's rights.

38 (6) The naming in a negotiable bill of a person to be  
39 notified of the arrival of the goods does not limit the  
40 negotiability of the bill nor constitute notice to a purchaser  
41 thereof of any interest of such person in the goods.

336#07-502

42 336.7-502 RIGHTS ACQUIRED BY DUE NEGOTIATION.

43 (1) Subject to the following section and to the provisions  
44 of section 336.7-205 on fungible goods, a holder to whom a  
45 negotiable document of title has been duly negotiated acquires  
46 thereby:

47 (a) Title to the document;

48 (b) Title to the goods;

49 (c) All rights accruing under the law of agency or  
50 estoppel, including rights to goods delivered to the bailee  
51 after the document was issued; and

52 (d) The direct obligation of the issuer to hold or deliver  
53 the goods according to the terms of the document free of any  
54 defense or claim by ~~him~~ the issuer except those arising under  
55 the terms of the document or under this article. In the case of  
56 a delivery order the bailee's obligation accrues only upon  
57 acceptance and the obligation acquired by the holder is that the  
58 issuer and any endorser will procure the acceptance of the  
59 bailee.

60 (2) Subject to the following section, title and rights so  
61 acquired are not defeated by any stoppage of the goods  
62 represented by the document or by surrender of such goods by the  
63 bailee, and are not impaired even though the negotiation or any  
64 prior negotiation constituted a breach of duty or even though  
65 any person has been deprived of possession of the document by  
66 misrepresentation, fraud, accident, mistake, duress, loss, theft  
67 or conversion, or even though a previous sale or other transfer  
68 of the goods or document has been made to a third person.

336#07-503

69 336.7-503 DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN  
70 CASES.

71 (1) A document of title confers no right in goods against a  
72 person who before issuance of the document had a legal interest

1 or a perfected security interest in them and who neither  
 2 (a) delivered or entrusted them or any document of title  
 3 covering them to the bailor or ~~his~~ the bailor's nominee with \*  
 4 actual or apparent authority to ship, store or sell or with  
 5 power to obtain delivery under this article (section 336.7-403)  
 6 or with power of disposition under this chapter (sections  
 7 336.2-403 and 336.9-307) or other statute or rule of law; nor  
 8 (b) acquiesced in the procurement by the bailor or ~~his~~ the \*  
 9 bailor's nominee of any document of title. \*  
 10 (2) Title to goods based upon an unaccepted delivery order  
 11 is subject to the rights of anyone to whom a negotiable  
 12 warehouse receipt or bill of lading covering the goods has been  
 13 duly negotiated. Such a title may be defeated under the next  
 14 section to the same extent as the rights of the issuer or a  
 15 transferee from the issuer.  
 16 (3) Title to goods based upon a bill of lading issued to a  
 17 freight forwarder is subject to the rights of anyone to whom a  
 18 bill issued by the freight forwarder is duly negotiated; but  
 19 delivery by the carrier in accordance with part 4 of this  
 20 article pursuant to its own bill of lading discharges the  
 21 carrier's obligation to deliver.

336#07-504

22 336.7-504 RIGHTS ACQUIRED IN THE ABSENCE OF DUE  
 23 NEGOTIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.

24 (1) A transferee of a document, whether negotiable or  
 25 non-negotiable, to whom the document has been delivered but not  
 26 duly negotiated, acquires the title and rights which ~~his~~ the \*  
 27 transferor had or had actual authority to convey.

28 (2) In the case of a non-negotiable document, until but not  
 29 after the bailee receives notification of the transfer, the  
 30 rights of the transferee may be defeated

31 (a) by those creditors of the transferor who could treat  
 32 the sale as void under section 336.2-402; or

33 (b) by a buyer from the transferor in ordinary course of  
 34 business if the bailee has delivered the goods to the buyer or  
 35 received notification of ~~his~~ the buyer's rights; or \*  
 36 (c) as against the bailee by good faith dealings of the

37 bailee with the transferor.

38 (3) A diversion or other change of shipping instructions by  
 39 the consignor in a non-negotiable bill of lading which causes  
 40 the bailee not to deliver to the consignee defeats the  
 41 consignee's title to the goods if they have been delivered to a  
 42 buyer in ordinary course of business and in any event defeats  
 43 the consignee's rights against the bailee.

44 (4) Delivery pursuant to a non-negotiable document may be  
 45 stopped by a seller under section 336.2-705, and subject to the  
 46 requirement of due notification there provided. A bailee  
 47 honoring the seller's instructions is entitled to be indemnified  
 48 by the seller against any resulting loss or expense.

336#07-506

49 336.7-506 DELIVERY WITHOUT ENDORSEMENT: RIGHT TO COMPEL  
 50 ENDORSEMENT.

51 The transferee of a negotiable document of title has a  
 52 specifically enforceable right to have ~~his~~ the transferor supply \*  
 53 any necessary endorsement but the transfer becomes a negotiation  
 54 only as of the time the endorsement is supplied.

336#07-507

55 336.7-507 WARRANTIES ON NEGOTIATION OR TRANSFER OF  
 56 RECEIPT OR BILL.

57 Where a person negotiates or transfers a document of title  
 58 for value otherwise than as a mere intermediary under the next  
 59 following section, then unless otherwise agreed ~~he~~ the person \*  
 60 warrants to ~~his~~ the person's immediate purchaser only in \*  
 61 addition to any warranty made in selling the goods

62 (a) that the document is genuine; and

63 (b) that ~~he~~ the warrantor has no knowledge of any fact \*  
 64 which would impair its validity or worth; and

65 (c) that ~~his~~ the warrantor's negotiation or transfer is \*  
 66 rightful and fully effective with respect to the title to the  
 67 document and the goods it represents.

336#07-602

68 336.7-602 ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE  
 69 DOCUMENT.

70 Except where the document was originally issued upon  
 71 delivery of the goods by a person who had no power to dispose of  
 72 them, no lien attaches by virtue of any judicial process to

1 goods in the possession of a bailee for which a negotiable  
 2 document of title is outstanding unless the document be first  
 3 surrendered to the bailee or its negotiation enjoined, and the  
 4 bailee shall not be compelled to deliver the goods pursuant to  
 5 process until the document is surrendered to ~~him~~ the bailee or  
 6 impounded by the court. One who purchases the document for  
 7 value without notice of the process or injunction takes free of  
 8 the lien imposed by judicial process.

336#07-603

9 336.7-603 CONFLICTING CLAIMS; INTERPLEADER.

10 If more than one person claims title or possession of the  
 11 goods, the bailee ~~is excused from delivery until he~~ has had a  
 12 reasonable time to ascertain the validity of the adverse claims  
 13 or to bring an action to compel all claimants to  
 14 interplead before making delivery, and may compel such  
 15 interpleader, either in defending an action for nondelivery of  
 16 the goods, or by original action, whichever is appropriate.

336#08-103

17 336.8-103 ISSUER'S LIEN.

18 A lien upon a security in favor of an issuer thereof is  
 19 valid against a purchaser only if:

- 20 (a) the security is certificated and the right of the
- 21 issuer to the lien is noted conspicuously thereon; or
- 22 (b) the security is uncertificated and a notation of the
- 23 right of the issuer to the lien is contained in the initial
- 24 transaction statement sent to the purchaser or, if ~~his~~ the
- 25 purchaser's interest is transferred to ~~him~~ the purchaser other
- 26 than by registration of transfer, pledge, or release, the
- 27 initial transaction statement sent to the registered owner or
- 28 the registered pledgee.

336#08-104

29 336.8-104 EFFECT OF OVERISSUE; "OVERISSUE".

30 (1) The provisions of this article which validate a  
 31 security or compel its issue or reissue do not apply to the  
 32 extent that validation, issue, or reissue would result in  
 33 overissue; but if:

- 34 (a) an identical security that does not constitute an
- 35 overissue is reasonably available for purchase, the person
- 36 entitled to issue or validation may compel the issuer to
- 37 purchase the security for ~~him~~ that person and either deliver a
- 38 certificated security or register the transfer of an
- 39 uncertificated security to ~~him~~ that person, against surrender of
- 40 any certificated security ~~he~~ the person holds; or
- 41 (b) a security is not so available for purchase, the person
- 42 entitled to issue or validation may recover from the issuer the
- 43 price ~~he~~ the person or the last purchaser for value paid for it
- 44 with interest from the date of ~~his~~ his demand.

45 (2) "Overissue" means the issue of securities in excess of  
 46 the amount the issuer has corporate power to issue.

336#08-105

47 336.8-105 CERTIFICATED SECURITIES NEGOTIABLE; STATEMENTS  
48 AND INSTRUCTIONS NOT NEGOTIABLE; PRESUMPTIONS.

- 49 (1) Certificated securities governed by this article are
- 50 negotiable instruments.
- 51 (2) Statements (section 336.8-408), notices, or the like,
- 52 sent by the issuer of uncertificated securities and instructions
- 53 (section 336.8-308) are neither negotiable instruments nor
- 54 certificated securities.
- 55 (3) In any action on a security:
- 56 (a) unless specifically denied in the pleadings, each
- 57 signature on a certificated security, in a necessary
- 58 endorsement, on an initial transaction statement, or on an
- 59 instruction, is admitted;
- 60 (b) if the effectiveness of a signature is put in issue,
- 61 the burden of establishing it is on the party claiming under the
- 62 signature, but the signature is presumed to be genuine or
- 63 authorized;
- 64 (c) if signatures on a certificated security are admitted
- 65 or established, production of the security entitles a holder to
- 66 recover on it unless the defendant establishes a defense or a
- 67 defect going to the validity of the security;
- 68 (d) if signatures on an initial transaction statement are
- 69 admitted or established, the facts stated in the statement are
- 70 presumed to be true as of the time of its issuance; and
- 71 (e) after it is shown that a defense or defect exists, the
- 72 plaintiff has the burden of establishing that ~~he~~ the plaintiff

1 or some person under whom ~~he~~ the plaintiff claims is a person \*  
 2 against whom the defense or defect is ineffective (section  
 3 336.8-202).

336#08-107

4 336.8-107 SECURITIES TRANSFERABLE; ACTION FOR PRICE.

5 (1) Unless otherwise agreed and subject to any applicable  
 6 law or regulation respecting short sales, a person obligated to  
 7 transfer securities may transfer any certificated security of  
 8 the specified issue in bearer form or registered in the name of  
 9 the transferee, or endorsed to ~~him~~ the transferee or in blank, \*  
 10 or ~~he~~ the person may transfer an equivalent uncertificated \*  
 11 security to the transferee or a person designated by the  
 12 transferee.

13 (2) If the buyer fails to pay the price as it comes due  
 14 under a contract of sale, the seller may recover the price of:

15 (a) certificated securities accepted by the buyers;

16 (b) uncertificated securities that have been transferred to  
 17 the buyer or a person designated by the buyer; and

18 (c) other securities if efforts at their resale would be  
 19 unduly burdensome or if there is no readily available market for  
 20 their resale.

336#08-108

21 336.8-108 REGISTRATION OF PLEDGE AND RELEASE OF  
 22 UNCERTIFICATED SECURITIES.

23 A security interest in an uncertificated security may be  
 24 evidenced by the registration of pledge to the secured party or  
 25 a person designated by ~~him~~ the secured party. There can be no \*  
 26 more than one registered pledge of an uncertificated security at  
 27 any time. The registered owner of an uncertificated security is  
 28 the person in whose name the security is registered, even if the  
 29 security is subject to a registered pledge. The rights of a  
 30 registered pledgee of an uncertificated security under this  
 31 article are terminated by the registration of release.

336#08-201

32 336.8-201 "ISSUER".

33 (1) With respect to obligations on or defenses to a  
 34 security, "issuer" includes a person who:

35 (a) places or authorizes the placing of ~~his~~ the person's \*  
 36 name on a certificated security (otherwise than as an  
 37 authenticating trustee, registrar, transfer agent, or the like)  
 38 to evidence that it represents a share, participation, or other  
 39 interest in ~~his~~ the person's property or in an enterprise, or to \*  
 40 evidence ~~his~~ the person's duty to perform an obligation \*  
 41 represented by the certificated security;

42 (b) creates shares, participations, or other interests in \*  
 43 ~~his~~ the property or in an enterprise or undertakes obligations,  
 44 which shares, participations, interests, or obligations are  
 45 uncertificated securities;

46 (c) directly or indirectly creates fractional interests in \*  
 47 ~~his~~ the person's rights or property, which fractional interests \*  
 48 are represented by certificated securities; or

49 (d) becomes responsible for or in place of any other person  
 50 described as an issuer in this section.

51 (2) With respect to obligations on or defenses to a \*  
 52 security, a guarantor is an issuer to the extent of ~~his~~ the \*  
 53 guaranty, whether or not ~~his~~ the guarantor's obligation is noted \*  
 54 on a certificated security or on statements of uncertificated  
 55 securities sent pursuant to section 336.8-408.

56 (3) With respect to registration of transfer, pledge, or  
 57 release (part 4 of this article), "issuer" means a person on  
 58 whose behalf transfer books are maintained.

336#08-202

59 336.8-202 ISSUER'S RESPONSIBILITY AND DEFENSES; NOTICE  
 60 OF DEFECT OR DEFENSE.

61 (1) Even against a purchaser for value and without notice,  
 62 the terms of a security include:

63 (a) if the security is certificated, those stated on the  
 64 security;

65 (b) if the security is uncertificated, those contained in  
 66 the initial transaction statement sent to the purchaser or, if  
 67 ~~his~~ the purchaser's interest is transferred to ~~him~~ the purchaser \*  
 68 other than by registration of transfer, pledge, or release, the  
 69 initial transaction statement sent to the registered owner or  
 70 registered pledgee; and

71 (c) those made part of the security by reference, on the  
 72 certificated security or in the initial transaction statement,

1 to another instrument, indenture, or document or to a  
 2 constitution, statute, ordinance, rule, regulation, order or the  
 3 like, to the extent that the terms referred to do not conflict  
 4 with the terms stated on the certificated security or contained  
 5 in the statement. A reference under this paragraph does not of  
 6 itself charge a purchaser for value with notice of a defect  
 7 going to the validity of the security, even though the  
 8 certificated security or statement expressly states that a  
 9 person accepting it admits notice.

10 (2) A certificated security in the hands of a purchaser for  
 11 value or an uncertificated security as to which an initial  
 12 transaction statement has been sent to a purchaser for value,  
 13 other than a security issued by a government or governmental  
 14 agency or unit, even though issued with a defect going to its  
 15 validity, is valid with respect to the purchaser if ~~he~~ the  
 16 purchaser is without notice of the particular defect unless the  
 17 defect involves a violation of constitutional provisions, in  
 18 which case the security is valid with respect to a subsequent  
 19 purchaser for value and without notice of the defect.

20 This subsection applies to an issuer that is a government  
 21 or governmental agency or unit only if either there has been  
 22 substantial compliance with the legal requirements governing the  
 23 issue or the issuer has received a substantial consideration for  
 24 the issue as a whole or for the particular security and a stated  
 25 purpose of the issue is one for which the issuer has power to  
 26 borrow money or issue the security.

27 (3) Except as provided in the case of certain unauthorized  
 28 signatures (section 336.8-205), lack of genuineness of a  
 29 certificated security or an initial transaction statement is a  
 30 complete defense, even against a purchaser for value and without  
 31 notice.

32 (4) All other defenses of the issuer of a certificated or  
 33 uncertificated security, including nondelivery and conditional  
 34 delivery of a certificated security, are ineffective against a  
 35 purchaser for value who has taken without notice of the  
 36 particular defense.

37 (5) Nothing in this section shall be construed to affect  
 38 the right of a party to a "when, as and if issued" or a "when  
 39 distributed" contract to cancel the contract in the event of a  
 40 material change in the character of the security that is the  
 41 subject of the contract or in the plan or arrangement pursuant  
 42 to which the security is to be issued or distributed.

336#08-203

43 336.8-203 STALENESS AS NOTICE OF DEFECTS OR DEFENSES.

44 (1) After an act or event creating a right to immediate  
 45 performance of the principal obligation represented by a  
 46 certificated security or that sets a date on or after which the  
 47 security is to be presented or surrendered for redemption or  
 48 exchange, a purchaser is charged with notice of any defect in  
 49 its issue or defense of the issuer if:

50 (a) the act or event is one requiring the payment of money,  
 51 the delivery of certificated securities, the registration of  
 52 transfer of uncertificated securities, or any of these on  
 53 presentation or surrender of the certificated security, the  
 54 funds or securities are available on the date set for payment or  
 55 exchange, and ~~he~~ the purchaser takes the security more than one  
 56 year after that date; and

57 (b) the act or event is not covered by paragraph (a) and ~~he~~  
 58 the purchaser takes the security more than two years after the  
 59 date set for surrender or presentation or the date on which  
 60 performance became due.

61 (2) A call that has been revoked is not within subsection  
 62 (1).

336#08-204

63 336.8-204 EFFECT OF ISSUER'S RESTRICTIONS ON TRANSFER.

64 A restriction on transfer of a security imposed by the  
 65 issuer, even if otherwise lawful, is ineffective against any  
 66 person without actual knowledge of it unless:

67 (a) the security is certificated and the restriction is  
 68 noted conspicuously thereon; or

69 (b) the security is uncertificated and a notation of the  
 70 restriction is contained in the initial transaction statement  
 71 sent to the person or, if ~~his~~ the person's interest is  
 72 transferred to ~~him~~ the person other than by registration of  
 73 transfer, pledge, or release, the initial transaction statement  
 74 sent to the registered owner or the registered pledgee.

336#08-206

1 336.8-206 COMPLETION OR ALTERATION OF CERTIFICATED  
2 SECURITY OR INITIAL TRANSACTION STATEMENT.

3 (1) If a certificated security contains the signatures  
4 necessary to its issue or transfer but is incomplete in any  
5 other respect:

6 (a) any person may complete it by filling in the blanks as  
7 authorized; and

8 (b) even though the blanks are incorrectly filled in, the  
9 security as completed is enforceable by a purchaser who took it  
10 for value and without notice of the incorrectness.

11 (2) A complete certificated security that has been  
12 improperly altered, even though fraudulently, remains  
13 enforceable, but only according to its original terms.

14 (3) If an initial transaction statement contains the  
15 signatures necessary to its validity, but is incomplete in any  
16 other respect:

17 (a) any person may complete it by filling in the blanks, as  
18 authorized; and

19 (b) even though the blanks are incorrectly filled in, the  
20 statement as completed is effective in favor of the person to  
21 whom it is sent if he the person purchased the security referred \*  
22 to therein for value and without notice of the incorrectness.

23 (4) A complete initial transaction statement that has been  
24 improperly altered, even though fraudulently, is effective in  
25 favor of a purchaser to whom it has been sent, but only  
26 according to its original terms.

336#08-208

27 336.8-208 EFFECT OF SIGNATURE OF AUTHENTICATING TRUSTEE,  
28 REGISTRAR, OR TRANSFER AGENT.

29 (1) A person placing ~~his~~ the person's signature upon a \*  
30 certificated security or an initial transaction statement as  
31 authenticating trustee, registrar, transfer agent, or the like,  
32 warrants to a purchaser for value of the certificated security  
33 or a purchaser for value of an uncertificated security to whom  
34 the initial transaction statement has been sent, if the  
35 purchaser is without notice of the particular defect, that:

36 (a) the certificated security or initial transaction  
37 statement is genuine;

38 (b) ~~his~~ the signer's own participation in the issue or \*  
39 registration of the transfer, pledge, or release of the security  
40 is within ~~his~~ the signer's capacity and within the scope of the \*  
41 authority received by ~~him~~ the signer from the issuer; and \*

42 (c) ~~he~~ the signer has reasonable grounds to believe the \*  
43 security is in the form and within the amount the issuer is  
44 authorized to issue.

45 (2) Unless otherwise agreed, a person by so ~~placing-his~~ \*  
46 signature signing does not assume responsibility for the \*  
47 validity of the security in other respects.

336#08-301

48 336.8-301 RIGHTS ACQUIRED BY PURCHASER.

49 (1) Upon transfer of a security to a purchaser (section  
50 336.8-313), the purchaser acquires the rights in the security  
51 which ~~his~~ the purchaser's transferor had or had actual authority \*  
52 to convey unless the purchaser's rights are limited by section  
53 336.8-302 (4).

54 (2) A transferee of a limited interest acquires rights only  
55 to the extent of the interest transferred. The creation or  
56 release of a security interest in a security is the transfer of  
57 a limited interest in that security.

336#08-302

58 336.8-302 "BONA FIDE PURCHASER"; "ADVERSE CLAIM"; TITLE  
59 ACQUIRED BY BONA FIDE PURCHASER.

60 (1) A "bona fide purchaser" is a purchaser for value in  
61 good faith and without notice of any adverse claim:

62 (a) who takes delivery of a certificated security in bearer  
63 form or in registered form, issued or endorsed to ~~him~~ the \*  
64 purchaser or in blank; \*

65 (b) to whom the transfer, pledge, or release of an  
66 uncertificated security is registered on the books of the  
67 issuer; or

68 (c) to whom a security is transferred under the provisions  
69 of paragraph (c), (d) (i), or (g) of section 336.8-313 (1).

70 (2) "Adverse claim" includes a claim that a transfer was or  
71 would be wrongful or that a particular adverse person is the  
72 owner of or has an interest in the security.



1 (3) A bona fide purchaser in addition to acquiring the  
 2 rights of a purchaser (section 336.8-301) also acquires ~~his~~ the  
 3 purchaser's interest in the security free of any adverse claim. \*

4 (4) Notwithstanding section 336.8-301 (1), the transferee  
 5 of a particular certificated security who has been a party to  
 6 any fraud or illegality affecting the security, or who as a  
 7 prior holder of that certificated security had notice of an  
 8 adverse claim, cannot improve ~~his~~ position by taking from a bona  
 9 fide purchaser. \*

336#08-303

10 336.8-303 "BROKER".

11 "Broker" means a person engaged ~~for-all-or-part-of-his-time~~  
 12 full or part-time in the business of buying and selling  
 13 securities, who in the transaction concerned acts for, buys a  
 14 security from, or sells a security to, a customer. Nothing in  
 15 this article determines the capacity in which a person acts for  
 16 purposes of any other statute or rule to which the person is  
 17 subject. \*

336#08-304

18 336.8-304 NOTICE TO PURCHASER OF ADVERSE CLAIMS.

19 (1) A purchaser (including a broker for the seller or  
 20 buyer, but excluding an intermediary bank) of a certificated  
 21 security is charged with notice of adverse claims if:

22 (a) the security, whether in bearer or registered form, has  
 23 been endorsed "for collection" or "for surrender" or for some  
 24 other purpose not involving transfer; or

25 (b) the security is in bearer form and has on it an  
 26 unambiguous statement that it is the property of a person other  
 27 than the transferor. The mere writing of a name on a security  
 28 is not such a statement.

29 (2) A purchaser (including a broker for the seller or  
 30 buyer, but excluding an intermediary bank) to whom the transfer,  
 31 pledge, or release of an uncertificated security is registered  
 32 is charged with notice of adverse claims as to which the issuer  
 33 has a duty under section 336.8-403 (4) at the time of  
 34 registration and which are noted in the initial transaction  
 35 statement sent to the purchaser or, if ~~his~~ the purchaser's  
 36 interest is transferred to ~~him~~ the purchaser other than by  
 37 registration of transfer, pledge, or release, the initial  
 38 transaction statement sent to the registered owner or the  
 39 registered pledgee. \*

40 (3) The fact that the purchaser (including a broker for the  
 41 seller or buyer) of a certificated or uncertificated security  
 42 has notice that the security is held for a third person or is  
 43 registered in the name of or endorsed by a fiduciary does not  
 44 create a duty of inquiry into the rightfulness of the transfer  
 45 or constitute constructive notice of adverse claims. However,  
 46 if the purchaser (excluding an intermediary bank) has knowledge  
 47 that the proceeds are being used or the transaction is for the  
 48 individual benefit of the fiduciary or otherwise in breach of  
 49 duty, the purchaser is charged with notice of adverse claims.

336#08-306

50 336.8-306 WARRANTIES ON PRESENTMENT AND TRANSFER OF  
 51 CERTIFICATED SECURITIES; WARRANTIES OF ORIGINATORS OF  
 52 INSTRUCTIONS.

53 (1) A person who presents a certificated security for  
 54 registration of transfer or for payment or exchange warrants to  
 55 the issuer that ~~he~~ the presenter is entitled to the  
 56 registration, payment, or exchange. But, a purchaser for value  
 57 and without notice of adverse claims who receives a new,  
 58 reissued, or reregistered certificated security on registration  
 59 of transfer or receives an initial transaction statement  
 60 confirming the registration of transfer of an equivalent  
 61 uncertificated security to ~~him~~ such a purchaser warrants only  
 62 that ~~he~~ the warrantor has no knowledge of any unauthorized  
 63 signature (section 336.8-311) in a necessary endorsement. \*

64 (2) A person by transferring a certificated security to a  
 65 purchaser for value warrants only that:

66 (a) ~~his~~ the transfer is effective and rightful; \*

67 (b) the security is genuine and has not been materially  
 68 altered; and

69 (c) ~~he knows of~~ no fact which might impair the validity of  
 70 the security is known to the person making the transfer. \*

71 (3) If a certificated security is delivered by an  
 72 intermediary known to be entrusted with delivery of the security  
 73 on behalf of another or with collection of a draft or other

1 claim against delivery, the intermediary by delivery warrants  
2 only ~~his-own~~ the intermediary's good faith and authority, even \*  
3 though ~~he~~ the intermediary has purchased or made advances \*  
4 against the claim to be collected against the delivery.

5 (4) A pledgee or other holder for security who redelivers a  
6 certificated security received, or after payment and on order of  
7 the debtor delivers that security to a third person, makes only  
8 the warranties of an intermediary under subsection (3).

9 (5) A person who originates an instruction warrants to the  
10 issuer that:

11 (a) ~~he~~ the person is an appropriate person to originate the \*  
12 instruction; and

13 (b) at the time the instruction is presented to the issuer  
14 ~~he~~ the person will be entitled to the registration of transfer, \*  
15 pledge, or release.

16 (6) A person who originates an instruction warrants to any  
17 person specially guaranteeing ~~his~~ the warrantor's signature \*  
18 (subsection 336.8-312 (3)) that:

19 (a) ~~he~~ the warrantor is an appropriate person to originate \*  
20 the instruction;

21 (b) at the time the instruction is presented to the issuer  
22 (i) ~~he~~ the warrantor will be entitled to the registration \*  
23 of transfer, pledge, or release; and

24 (ii) the transfer, pledge, or release requested in the  
25 instruction will be registered by the issuer free from all  
26 liens, security interests, restrictions, and claims other than  
27 those specified in the instruction.

28 (7) A person who originates an instruction warrants to a  
29 purchaser for value and to any person guaranteeing the  
30 instruction (section 336.8-312 (6)) that:

31 (a) ~~he~~ the person is an appropriate person to originate the \*  
32 instruction;

33 (b) the uncertificated security referred to therein is  
34 valid; and

35 (c) at the time the instruction is presented to the issuer  
36 (i) the transferor will be entitled to the registration of  
37 transfer, pledge, or release;

38 (ii) the transfer, pledge, or release requested in the  
39 instruction will be registered by the issuer free from all  
40 liens, security interests, restrictions, and claims other than  
41 those specified in the instruction; and

42 (iii) the requested transfer, pledge, or release will be  
43 rightful.

44 (8) If a secured party is the registered pledgee or the  
45 registered owner of an uncertificated security, a person who  
46 originates an instruction of release or transfer to the debtor  
47 or, after payment and on order of the debtor, a transfer  
48 instruction to a third person, warrants to the debtor or the  
49 third person only that ~~he~~ the warrantor is an appropriate person \*  
50 to originate the instruction and, at the time the instruction is  
51 presented to the issuer, the transferor will be entitled to the  
52 registration of release or transfer. If a transfer instruction  
53 to a third person who is a purchaser for value is originated on  
54 order of the debtor, the debtor makes to the purchaser the  
55 warranties of paragraphs (b) and (c) (ii) and (iii) of  
56 subsection (7).

57 (9) A person who transfers an uncertificated security to a  
58 purchaser for value and does not originate an instruction in  
59 connection with the transfer warrants only that:

60 (a) ~~his~~ the transfer is effective and rightful; and  
61 (b) the uncertificated security is valid.

62 (10) A broker gives to ~~his~~ a customer and to the issuer and \*  
63 a purchaser the applicable warranties provided in this section  
64 and has the rights and privileges of a purchaser under this  
65 section. The warranties of and in favor of the broker, acting  
66 as an agent are in addition to applicable warranties given by  
67 and in favor of ~~his~~ the broker's customer. \*

336#08-307

68 336.8-307 EFFECT OF DELIVERY WITHOUT ENDORSEMENT; RIGHT  
69 TO COMPEL ENDORSEMENT.

70 If a certificated security in registered form has been  
71 delivered to a purchaser without a necessary endorsement ~~he~~ the \*  
72 purchaser may become a bona fide purchaser only as of the time \*  
73 the endorsement is supplied; but against the transferor, the  
74 transfer is complete upon delivery and the purchaser has a  
75 specifically enforceable right to have any necessary endorsement

1 supplied.

336#08-308

2 336.8-308 ENDORSEMENTS; INSTRUCTIONS.

3 (1) An endorsement of a certificated security in registered  
4 form is made when an appropriate person signs on it or on a  
5 separate document an assignment or transfer of the security or a  
6 power to assign or transfer it or ~~his~~ the person's signature is \*  
7 written without more upon the back of the security.

8 (2) An endorsement may be in blank or special. An  
9 endorsement in blank includes an endorsement to bearer. A  
10 special endorsement specifies to whom the security is to be  
11 transferred, or who has power to transfer it. A holder may  
12 convert a blank endorsement into a special endorsement.

13 (3) An endorsement purporting to be only a part of a  
14 certificated security representing units intended by the issuer  
15 to be separately transferable is effective to the extent of the  
16 endorsement.

17 (4) An "instruction" is an order to the issuer of an  
18 uncertificated security requesting that the transfer, pledge, or  
19 release from pledge of the uncertificated security specified  
20 therein be registered.

21 (5) An instruction originated by an appropriate person is:

22 (a) a writing signed by an appropriate person; or

23 (b) a communication to the issuer in any form agreed upon  
24 in writing signed by the issuer and an appropriate person.

25 If an instruction has been originated by an appropriate  
26 person but is incomplete in any other respect, any person may  
27 complete it as authorized and the issuer may rely on it as  
28 completed even though it has been completed incorrectly.

29 (6) "An appropriate person" in subsection (1) means the  
30 person specified by the certificated security or by special  
31 endorsement to be entitled to the security.

32 (7) "An appropriate person" in subsection (5) means:

33 (a) for an instruction to transfer or pledge an  
34 uncertificated security which is then not subject to a  
35 registered pledge, the registered owner; or

36 (b) for an instruction to transfer or release an  
37 uncertificated security which is then subject to a registered  
38 pledge, the registered pledgee.

39 (8) In addition to the persons designated in subsections  
40 (6) and (7), "an appropriate person" in subsections (1) and (5)  
41 includes:

42 (a) if the person designated is described as a fiduciary  
43 but is no longer serving in the described capacity, either that  
44 person or ~~his~~ a successor; \*

45 (b) if the persons designated are described as more than  
46 one person as fiduciaries and one or more are no longer serving  
47 in the described capacity, the remaining fiduciary or  
48 fiduciaries, whether or not a successor has been appointed or  
49 qualified;

50 (c) if the person designated is an individual and is  
51 without capacity to act by virtue of death, incompetence,  
52 infancy, or otherwise, ~~his~~ the person's executor, administrator, \*  
53 guardian, or like fiduciary;

54 (d) if the persons designated are described as more than  
55 one person as tenants by the entirety or with right of  
56 survivorship and by reason of death all cannot sign, the  
57 survivor or survivors;

58 (e) a person having power to sign under applicable law or  
59 controlling instrument; and

60 (f) to the extent that the person designated or any of the  
61 foregoing persons may act through an agent, ~~his~~ the authorized \*  
62 agent.

63 (9) Unless otherwise agreed, the endorser of a certificated  
64 security by ~~his~~ the endorsement or the originator of an \*  
65 instruction by ~~his~~ the origination assumes no obligation that \*  
66 the security will be honored by the issuer but only the  
67 obligations provided in section 336.8-306.

68 (10) Whether the person signing is appropriate is  
69 determined as of the date of signing and an endorsement made by  
70 or an instruction originated by ~~him~~ the person does not become \*  
71 unauthorized for the purposes of this article by virtue of any  
72 subsequent change of circumstances.

73 (11) Failure of a fiduciary to comply with a controlling  
74 instrument or with the law of the state having jurisdiction of  
75 the fiduciary relationship, including any law requiring the

1 fiduciary to obtain court approval of the transfer, pledge, or  
 2 release, does not render ~~his~~ the fiduciary's endorsement or an \*  
 3 instruction originated by ~~him~~ the fiduciary unauthorized for the \*  
 4 purposes of this article.

336#08-311

5 336.8-311 EFFECT OF UNAUTHORIZED ENDORSEMENT OR  
 6 INSTRUCTION.

7 Unless the owner or pledgee has ratified an unauthorized  
 8 endorsement or instruction or is otherwise precluded from  
 9 asserting its ineffectiveness:

10 (a) ~~he~~ the owner or pledgee may assert its ineffectiveness \*  
 11 against the issuer or any purchaser, other than a purchaser for  
 12 value and without notice of adverse claims, who has in good  
 13 faith received a new, reissued, or reregistered certificated  
 14 security on registration of transfer or received an initial  
 15 transaction statement confirming the registration of transfer,  
 16 pledge, or release of an equivalent uncertificated security to  
 17 ~~him~~ the same purchaser for value; and \*

18 (b) an issuer who registers the transfer of a certificated  
 19 security upon the unauthorized endorsement or who registers the  
 20 transfer, pledge, or release of an uncertificated security upon  
 21 the unauthorized instruction is subject to liability for  
 22 improper registration (section 336.8-404).

336#08-313

23 336.8-313 WHEN TRANSFER TO PURCHASER OCCURS; FINANCIAL  
 24 INTERMEDIARY AS BONA FIDE PURCHASER; "FINANCIAL INTERMEDIARY".

25 (1) Transfer of a security or a limited interest (including  
 26 a security interest) therein to a purchaser occurs only:

27 (a) at the time ~~he~~ the purchaser or a person designated by \*  
 28 ~~him~~ the purchaser acquires possession of a certificated security; \*

29 (b) at the time the transfer, pledge, or release of an  
 30 uncertificated security is registered to ~~him~~ the purchaser or a \*  
 31 person designated by ~~him~~ the purchaser; \*

32 (c) at the time ~~his~~ the purchaser's financial intermediary \*  
 33 acquires possession of a certificated security specially  
 34 endorsed to or issued in the name of the purchaser;

35 (d) at the time a financial intermediary, not a clearing  
 36 corporation, sends ~~him~~ the purchaser confirmation of the \*  
 37 purchase and also by book entry or otherwise identifies as  
 38 belonging to the purchaser

39 (i) a specific certificated security in the financial  
 40 intermediary's possession;

41 (ii) a quantity of securities that constitute or are part  
 42 of a fungible bulk of certificated securities in the financial  
 43 intermediary's possession or of uncertificated securities  
 44 registered in the name of the financial intermediary; or

45 (iii) a quantity of securities that constitute or are part  
 46 of a fungible bulk of securities shown on the account of the  
 47 financial intermediary on the books of another financial  
 48 intermediary;

49 (e) with respect to an identified certificated security to  
 50 be delivered while still in the possession of a third person,  
 51 not a financial intermediary, at the time that person  
 52 acknowledges ~~that-he-holds~~ holding for the purchaser; \*

53 (f) with respect to a specific uncertificated security the  
 54 pledge or transfer of which has been registered to a third  
 55 person, not a financial intermediary, at the time that person  
 56 acknowledges ~~that-he-holds~~ holding for the purchaser; \*

57 (g) at the time appropriate entries to the account of the  
 58 purchaser or a person designated by ~~him~~ the purchaser on the \*  
 59 books of a clearing corporation are made under section 336.8-320.

60 (h) with respect to the transfer of a security interest  
 61 where the debtor has signed a security agreement containing a  
 62 description of the security, at the time a written notification,  
 63 which, in the case of the creation of the security interest, is  
 64 signed by the debtor (which may be a copy of the security  
 65 agreement) or which, in the case of the release or assignment of  
 66 the security interest created pursuant to this paragraph, is  
 67 signed by the secured party, is received by

68 (i) a financial intermediary on whose books the interest of  
 69 the transferor in the security appears;

70 (ii) a third person, not a financial intermediary, in  
 71 possession of the security, if it is certificated;

72 (iii) a third person, not a financial intermediary, who is  
 73 the registered owner of the security, if it is uncertificated  
 74 and not subject to a registered pledge; or

1 (iv) a third person, not a financial intermediary, who is  
2 the registered pledgee of the security, if it is uncertificated  
3 and subject to a registered pledge;

4 (i) with respect to the transfer of a security interest  
5 where the transferor has signed a security agreement containing  
6 a description of the security, at the time new value is given by  
7 the secured party; or

8 (j) with respect to the transfer of a security interest  
9 where the secured party is a financial intermediary and the  
10 security has already been transferred to the financial  
11 intermediary under paragraphs (a), (b), (c), (d), or (g), at the  
12 time the transferor has signed a security agreement containing a  
13 description of the security and value is given by the secured  
14 party.

15 (2) The purchaser is the owner of a security held for him  
16 the purchaser by a financial intermediary, but cannot be a bona  
17 fide purchaser of a security so held except in the circumstances  
18 specified in paragraphs (c), (d) (i), and (g) of subsection  
19 (1). If a security so held is part of a fungible bulk, as in  
20 the circumstances specified in paragraphs (d) (ii) and (d) (iii)  
21 of subsection (1), the purchaser is the owner of a proportionate  
22 property interest in the fungible bulk.

23 (3) Notice of an adverse claim received by the financial  
24 intermediary or by the purchaser after the financial  
25 intermediary takes delivery of a certificated security as a  
26 holder for value or after the transfer, pledge, or release of an  
27 uncertificated security has been registered free of the claim to  
28 a financial intermediary who has given value is not effective  
29 either as to the financial intermediary or as to the purchaser.  
30 However, as between the financial intermediary and the purchaser  
31 the purchaser may demand transfer of an equivalent security as  
32 to which no notice of adverse claim has been received.

33 (4) A "financial intermediary" is a bank, broker, clearing  
34 corporation, or other person (or the nominee of any of them)  
35 which in the ordinary course of its business maintains security  
36 accounts for its customers and is acting in that capacity. A  
37 financial intermediary may have a security interest in  
38 securities held in account for its customer.

336#08-314

39 336.8-314 DUTY TO TRANSFER, WHEN COMPLETED.

40 (1) Unless otherwise agreed, if a sale of a security is  
41 made on an exchange or otherwise through brokers:

42 (a) the selling ~~customer-fulfills-his~~ customer's duty to  
43 transfer is fulfilled at the time ~~he~~ the selling customer:

44 (i) places a certificated security in the possession of the  
45 selling broker or a person designated by the broker;

46 (ii) causes an uncertificated security to be registered in  
47 the name of the selling broker or a person designated by the  
48 broker;

49 (iii) if requested, causes an acknowledgment to be made to  
50 the selling broker that a certificated or uncertificated  
51 security is held for the broker; or

52 (iv) places in the possession of the selling broker or of a  
53 person designated by the broker a transfer instruction for an  
54 uncertificated security, providing the issuer does not refuse to  
55 register the requested transfer if the instruction is presented  
56 to the issuer for registration within 30 days thereafter; and

57 (b) the duty of a selling broker, including a correspondent  
58 broker acting for a selling customer, ~~fulfills-his-duty~~ to  
59 transfer is fulfilled at the time ~~he~~ the selling broker:

60 (i) places a certificated security in the possession of the  
61 buying broker or a person designated by the buying broker;

62 (ii) causes an uncertificated security to be registered in  
63 the name of the buying broker or a person designated by the  
64 buying broker;

65 (iii) places in the possession of the buying broker or of a  
66 person designated by the buying broker a transfer instruction  
67 for an uncertificated security, providing the issuer does not  
68 refuse to register the requested transfer if the instruction is  
69 presented to the issuer for registration within 30 days  
70 thereafter; or

71 (iv) effects clearance of the sale in accordance with the  
72 rules of the exchange on which the transaction took place.

73 (2) Except as provided in this section or unless otherwise  
74 agreed, a transferor's duty to transfer a security under a  
75 contract of purchase is not fulfilled until he the transferor:

- 1 (a) places a certificated security in form to be negotiated  
 2 by the purchaser in the possession of the purchaser or of a  
 3 person designated by ~~him~~ the purchaser; \*
- 4 (b) causes an uncertificated security to be registered in  
 5 the name of the purchaser or a person designated by ~~him~~ the  
 6 purchaser; or \*
- 7 (c) if the purchaser requests, causes an acknowledgment to  
 8 be made to the purchaser that a certificated or uncertificated  
 9 security is held for ~~him~~ the purchaser. \*
- 10 (3) Unless made on an exchange, a sale to a broker  
 11 purchasing for ~~his~~ the broker's own account is within subsection  
 12 (2) and not within subsection (1). \*

336#08-315

13 336.8-315 ACTION AGAINST TRANSFEREE BASED UPON WRONGFUL  
 14 TRANSFER.

- 15 (1) Any person against whom the transfer of a security is  
 16 wrongful for any reason, including ~~his~~ the person's incapacity,  
 17 as against anyone except a bona fide purchaser, may: \*
- 18 (a) reclaim possession of the certificated security  
 19 wrongfully transferred;
- 20 (b) obtain possession of any new certificated security  
 21 representing all or part of the same rights;
- 22 (c) compel the origination of an instruction to transfer to  
 23 ~~him~~ such a person or a person another designated by ~~him~~ the  
 24 person an uncertificated security constituting all or part of  
 25 the same rights; or \*
- 26 (d) have damages. \*
- 27 (2) If the transfer is wrongful because of an unauthorized  
 28 endorsement of a certificated security, the owner may also  
 29 reclaim or obtain possession of the security or new certificated  
 30 security, even from a bona fide purchaser, if the  
 31 ineffectiveness of the purported endorsement can be asserted  
 32 against ~~him~~ the bona fide purchaser under the provisions of this  
 33 article on unauthorized endorsements (section 336.8-311). \*
- 34 (3) The right to obtain or reclaim possession of a  
 35 certificated security or to compel the origination of a transfer  
 36 instruction may be specifically enforced and the transfer of a  
 37 certificated or uncertificated security enjoined and a  
 38 certificated security impounded pending the litigation. \*

336#08-316

39 336.8-316 PURCHASER'S RIGHT TO REQUISITES FOR  
 40 REGISTRATION OF TRANSFER, PLEDGE, OR RELEASE ON BOOKS.

- 41 Unless otherwise agreed, the transferor of a certificated  
 42 security or the transferor, pledgor, or pledgee of an  
 43 uncertificated security on due demand must supply ~~his~~ a  
 44 purchaser with any proof of ~~his~~ authority to transfer, pledge,  
 45 or release or with any other requisite necessary to obtain  
 46 registration of the transfer, pledge, or release of the  
 47 security; but if the transfer, pledge, or release is not for  
 48 value, a transferor, pledgor, or pledgee need not do so unless  
 49 the purchaser furnishes the necessary expenses. Failure within a  
 50 reasonable time to comply with a demand made gives the purchaser  
 51 the right to reject or rescind the transfer, pledge, or release. \*

336#08-318

52 336.8-318 NO CONVERSION BY GOOD FAITH CONDUCT.

- 53 An agent or bailee who in good faith (including observance  
 54 of reasonable commercial standards if ~~he-is~~ in the business of  
 55 buying, selling, or otherwise dealing with securities) has  
 56 received certificated securities and sold, pledged, or delivered  
 57 them or has sold or caused the transfer or pledge of  
 58 uncertificated securities over which ~~he~~ the agent or bailee had  
 59 control according to the instructions of ~~his~~ the agent's or  
 60 bailee's principal, is not liable for conversion or for  
 61 participation in breach of fiduciary duty although the principal  
 62 had no right so to deal with the securities. \*

336#08-319

63 336.8-319 STATUTE OF FRAUDS.

- 64 A contract for the sale of securities is not enforceable by  
 65 way of action or defense unless:
- 66 (a) there is some writing signed by the party against whom  
 67 enforcement is sought or by ~~his~~ the party's authorized agent or  
 68 broker, sufficient to indicate that a contract has been made for  
 69 sale of a stated quantity of described securities at a defined  
 70 or stated price; \*
- 71 (b) delivery of a certificated security or transfer  
 72 instruction has been accepted, transfer of an uncertificated

1 security has been registered and the transferee has failed to  
 2 send written objection to the issuer within ten days after  
 3 receipt of the initial transaction statement confirming the  
 4 registration, or payment has been made, but the contract is  
 5 enforceable under this provision only to the extent of the  
 6 delivery, registration, or payment;

7 (c) within a reasonable time a writing in confirmation of  
 8 the sale or purchase and sufficient against the sender under  
 9 paragraph (a) has been received by the party against whom  
 10 enforcement is sought and ~~he~~ the recipient has failed to send \*  
 11 written objection to its contents within ten days after its  
 12 receipt; or

13 (d) the party against whom enforcement is sought admits in \*  
 14 ~~his~~ pleading, testimony, or otherwise in court that a contract  
 15 was made for the sale of a stated quantity of described  
 16 securities at a defined or stated price.

336#08-321

17 336.8-321 ENFORCEABILITY, ATTACHMENT, PERFECTION AND  
 18 TERMINATION OF SECURITY INTERESTS.

19 (1) A security interest in a security is enforceable and  
 20 can attach only if it is transferred to the secured party or a  
 21 person designated by ~~him~~ the secured party pursuant to a \*  
 22 provision of section 336.8-313 (1).

23 (2) A security interest so transferred pursuant to  
 24 agreement by a transferor who has rights in the security to a  
 25 transferee who has given value is a perfected security interest,  
 26 but a security interest that has been transferred solely under  
 27 paragraph (i) of section 336.8-313 (1) becomes unperfected after  
 28 21 days unless, within that time, the requirements for transfer  
 29 under any other provision of section 336.8-313 (1) are satisfied.

30 (3) A security interest in a security is subject to the  
 31 provisions of article 9, but:

32 (a) no filing is required to perfect the security interest;  
 33 and

34 (b) no written security agreement signed by the debtor is  
 35 necessary to make the security interest enforceable, except as  
 36 provided in paragraph (h), (i), or (j) of section 336.8-313  
 37 (1). The secured party has the rights and duties provided under  
 38 section 336.9-207, to the extent they are applicable, whether or  
 39 not the security is certificated, and, if certificated, whether  
 40 or not it is in ~~his~~ the secured party's possession. \*

41 (4) Unless otherwise agreed, a security interest in a  
 42 security is terminated by transfer to the debtor or a person  
 43 designated by ~~him~~ the debtor pursuant to a provision of section \*  
 44 336.8-313 (1). If a security is thus transferred, the security  
 45 interest, if not terminated, becomes unperfected unless the  
 46 security is certificated and is delivered to the debtor for the  
 47 purpose of ultimate sale or exchange or presentation,  
 48 collection, renewal, or registration of transfer. In that case,  
 49 the security interest becomes unperfected after 21 days unless,  
 50 within that time, the security (or securities for which it has  
 51 been exchanged) is transferred to the secured party or a person  
 52 designated by ~~him~~ the secured party pursuant to a provision of \*  
 53 section 336.8-313 (1).

336#08-401

54 336.8-401 DUTY OF ISSUER TO REGISTER TRANSFER, PLEDGE,  
 55 OR RELEASE.

56 (1) If a certificated security in registered form is  
 57 presented to the issuer with a request to register transfer or  
 58 an instruction is presented to the issuer with a request to  
 59 register transfer, pledge, or release, the issuer shall register  
 60 the transfer, pledge, or release as requested if:

61 (a) the security is endorsed or the instruction was  
 62 originated by the appropriate person or persons (section  
 63 336.8-308);

64 (b) reasonable assurance is given that those endorsements  
 65 or instructions are genuine and effective (section 336.8-402);

66 (c) the issuer has no duty as to adverse claims or has  
 67 discharged the duty (section 336.8-403);

68 (d) any applicable law relating to the collection of taxes  
 69 has been complied with; and

70 (e) the transfer, pledge, or release is in fact rightful or  
 71 is to a bona fide purchaser.

72 (2) If an issuer is under a duty to register a transfer,  
 73 pledge, or release of a security, the issuer is also liable to  
 74 the person presenting a certificated security or an instruction

1 for registration or ~~his~~ the person's principal for loss \*  
2 resulting from any unreasonable delay in registration, or from  
3 failure or refusal to register the transfer, pledge, or release.

336#08-403

4 336.8-403 ISSUER'S DUTY AS TO ADVERSE CLAIMS.

5 (1) An issuer to whom a certificated security is presented  
6 for registration shall inquire into adverse claims if:

7 (a) a written notification of an adverse claim is received  
8 at a time and in a manner affording the issuer a reasonable  
9 opportunity to act on it prior to the issuance of a new,  
10 reissued, or reregistered certificated security, and the  
11 notification identifies the claimant, the registered owner, and  
12 the issue of which the security is a part, and provides an  
13 address for communications directed to the claimant; or

14 (b) the issuer is charged with notice of an adverse claim  
15 from a controlling instrument it has elected to require under  
16 section 336.8-402 (4).

17 (2) The issuer may discharge any duty of inquiry by any  
18 reasonable means, including notifying an adverse claimant by  
19 registered or certified mail at the address furnished by ~~him~~ the \*  
20 claimant or, if there be no such address, at ~~his~~ the claimant's \*  
21 residence or regular place of business that the certificated  
22 security has been presented for registration of transfer by a  
23 named person, and that the transfer will be registered unless  
24 within 30 days from the date of mailing the notification, either:

25 (a) an appropriate restraining order, injunction, or other  
26 process issues from a court of competent jurisdiction; or

27 (b) there is filed with the issuer an indemnity bond,  
28 sufficient in the issuer's judgment to protect the issuer and  
29 any transfer agent, registrar, or other agent of the issuer  
30 involved from any loss it or they may suffer by complying with  
31 the adverse claim.

32 (3) Unless an issuer is charged with notice of an adverse  
33 claim from a controlling instrument which it has elected to  
34 require under section 336.8-402 (4) or receives notification of  
35 an adverse claim under subsection (1), if a certificated  
36 security presented for registration is endorsed by the  
37 appropriate person or persons the issuer is under no duty to  
38 inquire into adverse claims. In particular:

39 (a) an issuer registering a certificated security in the  
40 name of a person who is a fiduciary or who is described as a  
41 fiduciary is not bound to inquire into the existence, extent, or  
42 correct description of the fiduciary relationship; and  
43 thereafter the issuer may assume without inquiry that the newly  
44 registered owner continues to be the fiduciary until the issuer  
45 receives written notice that the fiduciary is no longer acting  
46 as such with respect to the particular security;

47 (b) an issuer registering transfer on an endorsement by a  
48 fiduciary is not bound to inquire whether the transfer is made  
49 in compliance with a controlling instrument or with the law of  
50 the state having jurisdiction of the fiduciary relationship,  
51 including any law requiring the fiduciary to obtain court  
52 approval of the transfer; and

53 (c) the issuer is not charged with notice of the contents  
54 of any court record or file or other recorded or unrecorded  
55 document even though the document is in its possession and even  
56 though the transfer is made on the endorsement of a fiduciary to  
57 the same fiduciary ~~himself~~ or to ~~his~~ the fiduciary's nominee. \*

58 (4) An issuer is under no duty as to adverse claims with  
59 respect to an uncertificated security except:

60 (a) claims embodied in a restraining order, injunction, or  
61 other legal process served upon the issuer if the process was  
62 served at a time and in a manner affording the issuer a  
63 reasonable opportunity to act on it in accordance with the  
64 requirements of subsection (5);

65 (b) claims of which the issuer has received a written  
66 notification from the registered owner or the registered pledgee  
67 if the notification was received at a time and in a manner  
68 affording the issuer a reasonable opportunity to act on it in  
69 accordance with the requirements of subsection (5);

70 (c) claims (including restrictions on transfer not imposed  
71 by the issuer) to which the registration of transfer to the  
72 present registered owner was subject and were so noted in the  
73 initial transaction statement sent to ~~him~~ that owner; and \*

74 (d) claims as to which an issuer is charged with notice  
75 from a controlling instrument it has elected to require under



1 section 336.8-402 (4).

2 (5) If the issuer of an uncertificated security is under a  
3 duty as to an adverse claim, ~~he~~ the issuer discharges that duty  
4 by:

5 (a) including a notation of the claim in any statements  
6 sent with respect to the security under section 336.8-408 (3),  
7 (6), and (7); and

8 (b) refusing to register the transfer or pledge of the  
9 security unless the nature of the claim does not preclude  
10 transfer or pledge subject thereto.

11 (6) If the transfer or pledge of the security is registered  
12 subject to an adverse claim, a notation of the claim must be  
13 included in the initial transaction statement and all subsequent  
14 statements sent to the transferee and pledgee under section  
15 336.8-408.

16 (7) Notwithstanding subsections (4) and (5), if an  
17 uncertificated security was subject to a registered pledge at  
18 the time the issuer first came under a duty as to a particular  
19 adverse claim, the issuer has no duty as to that claim if  
20 transfer of the security is requested by the registered pledgee  
21 or an appropriate person acting for the registered pledgee  
22 unless:

23 (a) the claim was embodied in legal process which expressly  
24 provides otherwise;

25 (b) the claim was asserted in a written notification from  
26 the registered pledgee;

27 (c) the claim was one as to which the issuer was charged  
28 with notice from a controlling instrument it required under  
29 section 336.8-402 (4) in connection with the pledgee's request  
30 for transfer; or

31 (d) the transfer requested is to the registered owner.

336#08-405

32 336.8-405 LOST, DESTROYED, AND STOLEN CERTIFICATED  
33 SECURITIES.

34 (1) If a certificated security has been lost, apparently  
35 destroyed, or wrongfully taken, and the owner fails to notify  
36 the issuer of that fact within a reasonable time after ~~he has~~  
37 having notice of it and the issuer registers a transfer of the  
38 security before receiving notification, the owner is precluded  
39 from asserting against the issuer any claim for registering the  
40 transfer under section 336.8-404 or any claim to a new security  
41 under this section.

42 (2) If the owner of a certificated security claims that the  
43 security has been lost, destroyed, or wrongfully taken, the  
44 issuer shall issue a new certificated security or, at the option  
45 of the issuer, an equivalent uncertificated security in place of  
46 the original security if the owner:

47 (a) so requests before the issuer has notice that the  
48 security has been acquired by a bona fide purchaser;

49 (b) files with the issuer a sufficient indemnity bond; and

50 (c) satisfies any other reasonable requirements imposed by  
51 the issuer.

52 (3) If, after the issue of a new certificated or  
53 uncertificated security, a bona fide purchaser of the original  
54 certificated security presents it for registration of transfer,  
55 the issuer shall register the transfer unless registration would  
56 result in overissue, in which event the issuer's liability is  
57 governed by section 336.8-104. In addition to any rights on the  
58 indemnity bond, the issuer may recover the new certificated  
59 security from the person to whom it was issued or any person  
60 taking under ~~him~~ that person except a bona fide purchaser or may  
61 cancel the uncertificated security unless a bona fide purchaser  
62 or any person taking under a bona fide purchaser is then the  
63 registered owner or registered pledgee thereof.

336#08-406

64 336.8-406 DUTY OF AUTHENTICATING TRUSTEE, TRANSFER  
65 AGENT, OR REGISTRAR.

66 (1) If a person acts as authenticating trustee, transfer  
67 agent, registrar, or other agent for an issuer in the  
68 registration of transfers of its certificated securities or in  
69 the registration of transfers, pledges, and releases of its  
70 uncertificated securities, in the issue of new securities, or in  
71 the cancellation of surrendered securities:

72 (a) ~~he~~ the person is under a duty to the issuer to exercise  
73 good faith and due diligence in performing ~~his~~ functions; and

74 (b) with regard to the particular functions ~~he~~

1 ~~performs performed, he the person~~ has the same obligation to the \*  
 2 holder or owner of a certificated security or to the owner or  
 3 pledgee of an uncertificated security and has the same rights  
 4 and privileges as the issuer has in regard to those functions.

5 (2) Notice to an authenticating trustee, transfer agent,  
 6 registrar or other agent is notice to the issuer with respect to  
 7 the functions performed by the agent.

336#08-407

8 336.8-407 EXCHANGEABILITY OF SECURITIES.

9 (1) No issuer is subject to the requirements of this  
 10 section unless it regularly maintains a system for issuing the  
 11 class of securities involved under which both certificated and  
 12 uncertificated securities are regularly issued to the category  
 13 of owners, which includes the person in whose name the new  
 14 security is to be registered.

15 (2) Upon surrender of a certificated security with all  
 16 necessary endorsements and presentation of a written request by  
 17 the person surrendering the security, the issuer, ~~if he has~~ \*  
 18 having no duty as to adverse claims or ~~has having~~ \*  
 19 duty (section 336.8-403), shall issue to the person or a person \*  
 20 designated by ~~him~~ the person an equivalent uncertificated \*  
 21 security subject to all liens, restrictions, and claims that  
 22 were noted on the certificated security.

23 (3) Upon receipt of a transfer instruction originated by an  
 24 appropriate person who so requests, the issuer of an  
 25 uncertificated security shall cancel the uncertificated security  
 26 and issue an equivalent certificated security on which must be  
 27 noted conspicuously any liens and restrictions of the issuer and  
 28 any adverse claims (as to which the issuer has a duty under  
 29 section 336.8-403 (4)) to which the uncertificated security was  
 30 subject. The certificated security shall be registered in the  
 31 name of and delivered to:

32 (a) the registered owner, if the uncertificated security  
 33 was not subject to a registered pledge; or

34 (b) the registered pledgee, if the uncertificated security  
 35 was subject to a registered pledge.

336#09-103

36 336.9-103 PERFECTION OF SECURITY INTERESTS IN MULTIPLE  
 37 STATE TRANSACTIONS.

38 (1) Documents, instruments and ordinary goods.

39 (a) This subsection applies to documents and instruments  
 40 and to goods other than those covered by a certificate of title  
 41 described in subsection (2), mobile goods described in  
 42 subsection (3), and minerals described in subsection (5).

43 (b) Except as otherwise provided in this subsection,  
 44 perfection and the effect of perfection or nonperfection of a  
 45 security interest in collateral are governed by the law of the  
 46 jurisdiction where the collateral is when the last event occurs  
 47 on which is based the assertion that the security interest is  
 48 perfected or unperfected.

49 (c) If the parties to a transaction creating a purchase  
 50 money security interest in goods in one jurisdiction understand  
 51 at the time that the security interest attaches that the goods  
 52 will be kept in another jurisdiction, then the law of the other  
 53 jurisdiction governs the perfection and the effect of perfection  
 54 or nonperfection of the security interest from the time it  
 55 attaches until 30 days after the debtor receives possession of  
 56 the goods and thereafter if the goods are taken to the other  
 57 jurisdiction before the end of the 30 day period.

58 (d) When collateral is brought into and kept in this state  
 59 while subject to a security interest perfected under the law of  
 60 the jurisdiction from which the collateral was removed, the  
 61 security interest remains perfected, but if action is required  
 62 by part 3 of this article to perfect the security interest,

63 (i) if the action is not taken before the expiration of the  
 64 period of perfection in the other jurisdiction or the end of  
 65 four months after the collateral is brought into this state,  
 66 whichever period first expires, the security interest becomes  
 67 unperfected at the end of that period and is thereafter deemed  
 68 to have been unperfected as against a person who became a  
 69 purchaser after removal;

70 (ii) if the action is taken before the expiration of the  
 71 period specified in subparagraph (i), the security interest  
 72 continues perfected thereafter;

73 (iii) for the purpose of priority over a buyer of consumer  
 74 goods (subsection (2) of section 336.9-307), the period of the

1 effectiveness of a filing in the jurisdiction from which the  
2 collateral is removed is governed by the rules with respect to  
3 perfection in subparagraphs (i) and (ii).

4 (2) Certificate of title.

5 (a) This subsection applies to goods covered by a  
6 certificate of title issued under a statute of this state or of  
7 another jurisdiction under the law of which indication of a  
8 security interest on the certificate is required as a condition  
9 of perfection.

10 (b) Except as otherwise provided in this subsection,  
11 perfection and the effect of perfection or nonperfection of the  
12 security interest are governed by the law (including the  
13 conflict of laws rules) of the jurisdiction issuing the  
14 certificate until four months after the goods are removed from  
15 that jurisdiction and thereafter until the goods are registered  
16 in another jurisdiction, but in any event not beyond surrender  
17 of the certificate. After the expiration of that period, the  
18 goods are not covered by the certificate of title within the  
19 meaning of this section.

20 (c) Except with respect to the rights of a buyer described  
21 in the next paragraph, a security interest, perfected in another  
22 jurisdiction otherwise than by notation on a certificate of  
23 title, in goods brought into this state and thereafter covered  
24 by a certificate of title issued by this state is subject to the  
25 rules stated in paragraph (d) of subsection (1).

26 (d) If goods are brought into this state while a security  
27 interest therein is perfected in any manner under the law of the  
28 jurisdiction from which the goods are removed and a certificate  
29 of title is issued by this state and the certificate does not  
30 show that the goods are subject to the security interest or that  
31 they may be subject to security interests not shown on the  
32 certificate, the security interest is subordinate to the rights  
33 of a buyer of the goods who is not in the business of selling  
34 goods of that kind to the extent that he the buyer gives value  
35 and receives delivery of the goods after issuance of the  
36 certificate and without knowledge of the security interest.

37 (3) Accounts, general intangibles and mobile goods.

38 (a) This subsection applies to accounts (other than an  
39 account described in subsection (5) on minerals) and general  
40 intangibles (other than uncertificated securities) and to goods  
41 which are mobile and which are of a type normally used in more  
42 than one jurisdiction, such as motor vehicles, trailers, rolling  
43 stock, airplanes, shipping containers, road building and  
44 construction machinery and commercial harvesting machinery and  
45 the like, if the goods are equipment or are inventory leased or  
46 held for lease by the debtor to others, and are not covered by a  
47 certificate of title described in subsection (2).

48 (b) The law (including the conflict of laws rules) of the  
49 jurisdiction in which the debtor is located governs the  
50 perfection and the effect of perfection or nonperfection of the  
51 security interest.

52 (c) If, however, the debtor is located in a jurisdiction  
53 which is not a part of the United States, and which does not  
54 provide for perfection of the security interest by filing or  
55 recording in that jurisdiction, the law of the jurisdiction in  
56 the United States in which the debtor has its major executive  
57 office in the United States governs the perfection and the  
58 effect of perfection or nonperfection of the security interest  
59 through filing. In the alternative, if the debtor is located in  
60 a jurisdiction which is not a part of the United States or  
61 Canada and the collateral is accounts or general intangibles for  
62 money due or to become due, the security interest may be  
63 perfected by notification to the account debtor. As used in  
64 this paragraph, "United States" includes its territories and  
65 possessions and the Commonwealth of Puerto Rico.

66 (d) A debtor shall be deemed located at ~~his~~ the debtor's  
67 place of business if ~~he~~ the debtor has one, at ~~his~~ the chief  
68 executive office if ~~he has~~ there is more than one place of  
69 business, otherwise at ~~his~~ the debtor's residence. If, however,  
70 the debtor is a foreign air carrier under the Federal Aviation  
71 Act of 1958, as amended, it shall be deemed located at the  
72 designated office of the agent upon whom service of process may  
73 be made on behalf of the foreign air carrier.

74 (e) A security interest perfected under the law of the  
75 jurisdiction of the location of the debtor is perfected until  
76 the expiration of four months after a change of the debtor's

\*

\*

\*

\*

\*

1 location to another jurisdiction, or until perfection would have  
2 ceased by the law of the first jurisdiction, whichever period  
3 first expires. Unless perfected in the new jurisdiction before  
4 the end of that period, it becomes unperfected thereafter and is  
5 deemed to have been unperfected as against a person who became a  
6 purchaser after the change.

7 (4) Chattel paper.

8 The rules stated for goods in subsection (1) apply to a  
9 possessory security interest in chattel paper. The rules stated  
10 for accounts in subsection (3) apply to a nonpossessory security  
11 interest in chattel paper, but the security interest may not be  
12 perfected by notification to the account debtor.

13 (5) Minerals.

14 Perfection and the effect of perfection or nonperfection of  
15 a security interest which is created by a debtor who has an  
16 interest in minerals or the like (including oil and gas) before  
17 extraction and which attaches thereto as extracted, or which  
18 attaches to an account resulting from the sale thereof at the  
19 wellhead or minehead are governed by the law (including the  
20 conflict of laws rules) of the jurisdiction wherein the wellhead  
21 or minehead is located.

22 (6) Uncertificated securities.

23 The law (including the conflict of laws rules) of the  
24 jurisdiction of organization of the issuer governs the  
25 perfection and the effect of perfection or nonperfection of a  
26 security interest in uncertificated securities.

336#09-105

27 336.9-105 DEFINITIONS AND INDEX OF DEFINITIONS.

28 (1) In this article unless the context otherwise requires:

29 (a) "Account debtor" means the person who is obligated on  
30 an account, chattel paper or general intangible;

31 (b) "Chattel paper" means a writing or writings which  
32 evidence both a monetary obligation and a security interest in  
33 or a lease of specific goods, but a charter or other contract  
34 involving the use or hire of a vessel is not chattel paper.  
35 When a transaction is evidenced both by such a security  
36 agreement or a lease and by an instrument or a series of  
37 instruments, the group of writings taken together constitutes  
38 chattel paper;

39 (c) "Collateral" means the property subject to a security  
40 interest, and includes accounts and chattel paper which have  
41 been sold;

42 (d) "Debtor" means the person who owes payment or other  
43 performance of the obligation secured, whether or not ~~he~~ the  
44 person owns or has rights in the collateral, and includes the  
45 seller of accounts or chattel paper. Where the debtor and the  
46 owner of the collateral are not the same person, the term  
47 "debtor" means the owner of the collateral in any provision of  
48 the article dealing with the collateral, the obligor in any  
49 provision dealing with the obligation, and may include both  
50 where the context so requires;

51 (e) "Deposit account" means a demand, time, savings,  
52 passbook or like account maintained with a bank, savings and  
53 loan association, credit union or like organization, other than  
54 an account evidenced by a certificate of deposit;

55 (f) "Document" means document of title as defined in the  
56 general definitions of article 1 (section 336.1-201) and a  
57 receipt of the kind described in subsection (2) of section  
58 336.7-201;

59 (g) "Encumbrance" includes real estate mortgages and other  
60 liens on real estate and all other rights in real estate that  
61 are not ownership interests.

62 (h) "Goods" includes all things which are movable at the  
63 time the security interest attaches or which are fixtures  
64 (section 336.9-313), but does not include money, documents,  
65 instruments, accounts, chattel paper, general intangibles, or  
66 minerals or the like (including oil and gas) before extraction.  
67 "Goods" also include standing timber which is to be cut and  
68 removed under a conveyance or contract for sale, the unborn  
69 young of animals and growing crops;

70 (i) "Instrument" means a negotiable instrument (defined in  
71 section 336.3-104), or a certificated security (defined in  
72 section 336.8-102) or any other writing which evidences a right  
73 to the payment of money and is not itself a security agreement  
74 or lease and is of a type which is in ordinary course of  
75 business transferred by delivery with any necessary endorsement

\*  
\*

1 or assignment;

2 (j) "Mortgage" means a consensual interest created by a  
3 real estate mortgage, a trust deed on real estate, or the like;

4 (k) An advance is made "pursuant to commitment" if the  
5 secured party has ~~bound-himself~~ made a binding promise to make \*  
6 it, whether or not a subsequent event of default or other event  
7 not within ~~his~~ the secured party's control has relieved or may \*  
8 relieve ~~him~~ the secured party from ~~his~~ the obligation. \*

9 (l) "Security agreement" means an agreement which creates  
10 or provides for a security interest;

11 (m) "Secured party" means a lender, seller or other person  
12 in whose favor there is a security interest, including a person  
13 to whom accounts or chattel paper have been sold. When the  
14 holders of obligations issued under an indenture of trust,  
15 equipment trust agreement or the like are represented by a  
16 trustee or other person, the representative is the secured party;

17 (n) "Transmitting utility" means any person engaged in the  
18 railroad, street railway or trolley bus business, the electric  
19 or electronics communications transmission business, the  
20 transmission of goods by pipeline, or the transmission or the  
21 production and transmission of electricity, steam, gas or water,  
22 or the provision of sewer service. Any person filing a  
23 financing statement under this article and under authority of  
24 the provisions of Minnesota Statutes 1974, Sections 300.111 to  
25 300.115 shall be deemed a "transmitting utility" hereunder.

26 (2) Other definitions applying to this article and the  
27 sections in which they appear are:

28 "Account," section 336.9-106.

29 "Attach," section 336.9-203.

30 "Construction mortgage," section 336.9-313(1).

31 "Consumer goods," section 336.9-109(1).

32 "Equipment," section 336.9-109(2).

33 "Farm products," section 336.9-109(3).

34 "Fixture," section 336.9-313.

35 "Fixture filing," section 336.9-313.

36 "General intangibles," section 336.9-106.

37 "Inventory," section 336.9-109(4).

38 "Lien creditor," section 336.9-301(3).

39 "Motor vehicle," section 336.9-401(5).

40 "Proceeds," section 336.9-306(1).

41 "Purchase money security interest," section 336.9-107.

42 "United States," section 336.9-103.

43 (3) The following definitions in other articles apply to  
44 this article:

45 "Check," section 336.3-104.

46 "Contract for sale," section 336.2-106.

47 "Holder in due course," section 336.3-302.

48 "Note," section 336.3-104.

49 "Sale," section 336.2-106.

50 (4) In addition article 1 contains general definitions and  
51 principles of construction and interpretation applicable  
52 throughout this article.

336#09-108

53 336.9-108 WHEN AFTER-ACQUIRED COLLATERAL NOT SECURITY  
54 FOR ANTECEDENT DEBT.

55 Where a secured party makes an advance, incurs an  
56 obligation, releases a perfected security interest, or otherwise  
57 gives new value which is to be secured in whole or in part by  
58 after-acquired property ~~his~~ the security interest in the \*  
59 after-acquired collateral shall be deemed to be taken for new  
60 value and not as security for an antecedent debt if the debtor  
61 acquires ~~his~~ rights in such collateral either in the ordinary \*  
62 course of ~~his~~ business or under a contract of purchase made \*  
63 pursuant to the security agreement within a reasonable time  
64 after new value is given.

336#09-109

65 336.9-109 CLASSIFICATION OF GOODS: "CONSUMER GOODS";  
66 "EQUIPMENT"; "FARM PRODUCTS"; "INVENTORY".

67 Goods are

68 (1) "consumer goods" if they are used or bought for use  
69 primarily for personal, family or household purposes;

70 (2) "equipment" if they are used or bought for use  
71 primarily in business (including farming or a profession) or by  
72 a debtor who is a nonprofit organization or a governmental  
73 subdivision or agency or if the goods are not included in the  
74 definitions of inventory, farm products or consumer goods;

1 (3) "farm products" if they are crops or livestock or  
 2 supplies used or produced in farming operations or if they are  
 3 products of crops or livestock in their unmanufactured states  
 4 (such as ginned cotton, wool-clip, maple syrup, milk and eggs),  
 5 and if they are in the possession of a debtor engaged in  
 6 raising, fattening, grazing or other farming operations. If  
 7 goods are farm products they are neither equipment nor inventory;

8 (4) "inventory" if they are held by a person who holds them  
 9 for sale or lease or to be furnished under contracts of service  
 10 or if ~~he~~ the person has so furnished them, or if they are raw \*  
 11 materials, work in process or materials used or consumed in a \*  
 12 business. Inventory of a person is not to be classified as ~~his~~ \*  
 13 the person's equipment.

336#09-112

14 336.9-112 WHERE COLLATERAL IS NOT OWNED BY DEBTOR.

15 Unless otherwise agreed, when a secured party knows that  
 16 collateral is owned by a person who is not the debtor, the owner  
 17 of the collateral is entitled to receive from the secured party  
 18 any surplus under section 336.9-502(2) or under section  
 19 336.9-504(1), and is not liable for the debt or for any  
 20 deficiency after resale, and ~~he~~ the owner has the same right as \*  
 21 the debtor

22 (a) to receive statements under section 336.9-208;

23 (b) to receive notice of and to object to a secured party's  
 24 proposal to retain the collateral in satisfaction of the  
 25 indebtedness under section 336.9-505;

26 (c) to redeem the collateral under section 336.9-506;

27 (d) to obtain injunctive or other relief under section  
 28 336.9-507(1); and

29 (e) to recover losses caused to ~~him~~ the owner under section \*  
 30 336.9-208(2).

336#09-206

31 336.9-206 AGREEMENT NOT TO ASSERT DEFENSES AGAINST  
 32 ASSIGNEE; MODIFICATION OF SALES WARRANTIES WHERE SECURITY  
 33 AGREEMENT EXISTS.

34 (1) Subject to any statute or decision which establishes a  
 35 different rule for buyers or lessees of consumer goods, an  
 36 agreement by a buyer or lessee ~~that he will~~ not to assert \*  
 37 against an assignee any claim or defense which ~~he~~ the buyer or \*  
 38 lessee may have against the seller or lessor is enforceable by \*  
 39 an assignee who takes ~~his~~ an assignment for value, in good faith \*  
 40 and without notice of a claim or defense, except as to defenses \*  
 41 of a type which may be asserted against a holder in due course  
 42 of a negotiable instrument under the article on commercial paper  
 43 (article 3). A buyer who as part of one transaction signs both  
 44 a negotiable instrument and a security agreement makes such an  
 45 agreement.

46 (2) When a seller retains a purchase money security  
 47 interest in goods the article on sales (article 2) governs the  
 48 sale and any disclaimer, limitation or modification of the  
 49 seller's warranties.

336#09-207

50 336.9-207 RIGHTS AND DUTIES WHEN COLLATERAL IS IN  
 51 SECURED PARTY'S POSSESSION.

52 (1) A secured party must use reasonable care in the custody  
 53 and preservation of collateral in ~~his~~ the secured party's \*  
 54 possession. In the case of an instrument or chattel paper  
 55 reasonable care includes taking necessary steps to preserve  
 56 rights against prior parties unless otherwise agreed.

57 (2) Unless otherwise agreed, when collateral is in the  
 58 secured party's possession

59 (a) reasonable expenses (including the cost of any  
 60 insurance and payment of taxes or other charges) incurred in the  
 61 custody, preservation, use or operation of the collateral are  
 62 chargeable to the debtor and are secured by the collateral;

63 (b) the risk of accidental loss or damage is on the debtor  
 64 to the extent of any deficiency in any effective insurance  
 65 coverage;

66 (c) the secured party may hold as additional security any  
 67 increase or profits (except money) received from the collateral,  
 68 but money so received, unless remitted to the debtor, shall be  
 69 applied in reduction of the secured obligation;

70 (d) the secured party must keep the collateral identifiable  
 71 but fungible collateral may be commingled;

72 (e) the secured party may repledge the collateral upon  
 73 terms which do not impair the debtor's right to redeem it.

1 (3) A secured party is liable for any loss caused by ~~his~~ \*  
 2 the secured party's failure to meet any obligation imposed by \*  
 3 the preceding subsections but does not lose ~~his~~ the security \*  
 4 interest.

5 (4) A secured party may use or operate the collateral for  
 6 the purpose of preserving the collateral or its value or  
 7 pursuant to the order of a court of appropriate jurisdiction or,  
 8 except in the case of consumer goods, in the manner and to the  
 9 extent provided in the security agreement.

336#09-208

10 336.9-208 REQUEST FOR STATEMENT OF ACCOUNT OR LIST OF  
11 COLLATERAL.

12 (1) A debtor may sign a statement indicating what ~~he~~ the \*  
 13 debtor believes to be the aggregate amount of unpaid \*  
 14 indebtedness as of a specified date and may send it to the  
 15 secured party with a request that the statement be approved or  
 16 corrected and returned to the debtor. When the security  
 17 agreement or any other record kept by the secured party  
 18 identifies the collateral a debtor may similarly request the  
 19 secured party to approve or correct a list of the collateral.

20 (2) The secured party must comply with such a request  
 21 within two weeks after receipt by sending a written correction  
 22 or approval. If the secured party claims a security interest in  
 23 all of a particular type of collateral owned by the debtor ~~he~~ \*  
 24 the secured party may indicate that fact in ~~his~~ the reply and \*  
 25 need not approve or correct an itemized list of such  
 26 collateral. If the secured party without reasonable excuse  
 27 fails to comply ~~he~~ the secured party is liable for any loss \*  
 28 caused to the debtor thereby; and if the debtor has properly  
 29 included in ~~his~~ the request a good faith statement of the \*  
 30 obligation or a list of the collateral or both the secured party  
 31 may claim a security interest only as shown in the statement  
 32 against persons misled by ~~his~~ the failure to comply. If ~~he~~ the \*  
 33 secured party no longer has an interest in the obligation or \*  
 34 collateral at the time the request is received ~~he~~ the secured \*  
 35 party must disclose the name and address of any known successor \*  
 36 in interest ~~known-to-him~~ and ~~he~~ the secured party is liable for \*  
 37 any loss caused to the debtor as a result of failure to  
 38 disclose. A successor in interest is not subject to this  
 39 section until a request is received by ~~him~~ the successor. \*

40 (3) A debtor is entitled to such a statement once every six  
 41 months without charge. The secured party may require payment of  
 42 a charge not exceeding \$10 for each additional statement  
 43 furnished.

336#09-301

44 336.9-301 PERSONS WHO TAKE PRIORITY OVER UNPERFECTED  
45 SECURITY INTERESTS; RIGHT OF "LIEN CREDITOR."

46 (1) Except as otherwise provided in subsection (2), an  
 47 unperfected security interest is subordinate to the rights of

48 (a) persons entitled to priority under section 336.9-312;  
 49 (b) a person who becomes a lien creditor before the  
 50 security interest is perfected;

51 (c) in the case of goods, instruments, documents, and  
 52 chattel paper, a person who is not a secured party and who is a  
 53 transferee in bulk or other buyer not in ordinary course of  
 54 business, or is a buyer of farm products in the ordinary course  
 55 of business, to the extent that ~~he~~ the person gives value and \*  
 56 receives delivery of the collateral without knowledge of the  
 57 security interest and before it is perfected;

58 (d) in the case of accounts and general intangibles, a  
 59 person who is not a secured party and who is a transferee to the  
 60 extent that ~~he~~ the person gives value without knowledge of the \*  
 61 security interest and before it is perfected.

62 (2) If the secured party files with respect to a purchase  
 63 money security interest before or within 20 days after the  
 64 debtor receives possession of the collateral, ~~he~~ the secured \*  
 65 party takes priority over the rights of a transferee in bulk or \*  
 66 of a lien creditor which arise between the time the security  
 67 interest attaches and the time of filing.

68 (3) A "lien creditor" means a creditor who has acquired a  
 69 lien on the property involved by attachment, levy or the like  
 70 and includes an assignee for benefit of creditors from the time  
 71 of assignment, and a trustee in bankruptcy from the date of the  
 72 filing of the petition or a receiver in equity from the time of  
 73 appointment.

74 (4) A person who becomes a lien creditor while a security

1 interest is perfected takes subject to the security interest  
2 only to the extent that it secures advances made before ~~he~~ the \*  
3 person becomes a lien creditor or within 45 days thereafter or \*  
4 made without knowledge of the lien or pursuant to a commitment  
5 entered into without knowledge of the lien.

336#09-302

6 336.9-302 WHEN FILING IS REQUIRED TO PERFECT SECURITY  
7 INTEREST; SECURITY INTERESTS TO WHICH FILING PROVISIONS OF THIS  
8 ARTICLE DO NOT APPLY.

9 (1) A financing statement must be filed to perfect all  
10 security interest except the following:

11 (a) A security interest in collateral in possession of the  
12 secured party under section 336.9-305;

13 (b) A security interest temporarily perfected in  
14 instruments or documents without delivery under section  
15 336.9-304 or in proceeds for a 20 day period under section  
16 336.9-306;

17 (c) A security interest created by an assignment of a  
18 beneficial interest in a trust or a decedent's estate;

19 (d) A purchase money security interest in consumer goods;  
20 but filing is required for a motor vehicle required to be  
21 registered; and fixture filing is required for priority over  
22 conflicting interests in fixtures to the extent provided in  
23 section 336.9-313;

24 (e) An assignment of accounts which does not alone or in  
25 conjunction with other assignments to the same assignee transfer  
26 a significant part of the outstanding accounts of the assignor;

27 (f) A security interest of a collecting bank (section  
28 336.4-208) or in securities (section 336.8-321) or arising under  
29 the article on sales (see section 336.9-113) or covered in  
30 subsection (3) of this section;

31 (g) An assignment for the benefit of all the creditors of  
32 the transferor, and subsequent transfers by the assignee  
33 thereunder.

34 (2) If a secured party assigns a perfected security  
35 interest, no filing under this article is required in order to  
36 continue the perfected status of the security interest against  
37 creditors of and transferees from the original debtor.

38 (3) The filing of a financing statement otherwise required  
39 by this article is not necessary or effective to perfect a  
40 security interest in property subject to the following statutes  
41 or treaties; except that to the extent such statutes or treaties  
42 are silent on a specific matter, the provisions of this article  
43 shall govern:

44 (a) a statute or treaty of the United States which provides  
45 for a national or international registration or a national or  
46 international certificate of title or which specifies a place of  
47 filing different from that specified in this article for filing  
48 of the security interest; or

49 (b) the following statutes of this state;

50 (i) Sections 168A.01 to 168A.31; but during any period in  
51 which collateral is inventory held for sale by a person who is  
52 in the business of selling goods of that kind, the filing  
53 provisions of this article (part 4) apply to a security interest  
54 in that collateral created by ~~him~~ the person as a debtor; or \*  
55 (ii) Sections 300.11 to 300.115.

56 (c) a certificate of title statute of another jurisdiction  
57 under the law of which indication of a security interest on the  
58 certificate is required as a condition of perfection (subsection  
59 (2) of section 336.9-103).

60 (4) Compliance with a statute or treaty described in  
61 subsection (3) is equivalent to the filing of a financing  
62 statement under this article, and a security interest in  
63 property subject to the statute or treaty can be perfected only  
64 by compliance therewith except as provided in section 336.9-103  
65 on multiple state transactions. A security interest perfected  
66 by compliance with such a statute or treaty is governed by this  
67 article in all respects not inconsistent with the provisions of  
68 the statute or treaty under which it was perfected, provided  
69 that this article shall not be deemed inconsistent if it  
70 provides for a more extensive duration of effectiveness.

336#09-307

71 336.9-307 PROTECTION OF BUYERS OF GOODS.

72 (1) A buyer in ordinary course of business (subsection (9)  
73 of section 336.1-201) takes free of a security interest created  
74 by ~~his~~ the seller even though the security interest is perfected \*



1 and even though the buyer knows of its existence, except that a  
2 buyer in the ordinary course of business who purchases farm  
3 products from a person engaged in farming operations is subject  
4 to section 223A.01.

5 (2) In the case of consumer goods, a buyer takes free of a  
6 security interest even though perfected if ~~he-buys~~ buying \*  
7 without knowledge of the security interest, for value and \*  
8 for ~~his-own~~ personal, family or household purposes unless prior  
9 to the purchase the secured party has filed a financing  
10 statement covering such goods.

11 (3) A buyer other than a buyer in ordinary course of  
12 business (subsection (1) of this section) takes free of a  
13 security interest to the extent that it secures future advances  
14 made after the secured party acquires knowledge of the purchase,  
15 or more than 45 days after the purchase, whichever first occurs,  
16 unless made pursuant to a commitment entered into without  
17 knowledge of the purchase and before the expiration of the  
18 45-day period.

336#09-308

19 336.9-308 PURCHASE OF CHATTEL PAPER AND INSTRUMENTS.

20 A purchaser of chattel paper or an instrument who gives new  
21 value and takes possession of it in the ordinary course of ~~his~~ \*  
22 business has priority over a security interest in the chattel  
23 paper or instrument

24 (a) which is perfected under section 336.9-304 (permissive  
25 filing and temporary perfection) or under section 336.9-306  
26 (perfection as to proceeds) if ~~he-acts~~ acting without knowledge \*  
27 that the specific paper or instrument is subject to a security  
28 interest; or

29 (b) which is claimed merely as proceeds of inventory  
30 subject to a security interest (section 336.9-306) even though  
31 ~~he the purchaser~~ knows that the specific paper or instrument is \*  
32 subject to the security interest.

336#09-310

33 336.9-310 PRIORITY OF CERTAIN LIENS ARISING BY OPERATION  
34 OF LAW.

35 When a person in the ordinary course of ~~his~~ \*  
36 furnishes services or materials with respect to goods subject to  
37 a security interest, a lien upon goods in the possession of such  
38 person given by statute or rule of law for such materials or  
39 services takes priority over a perfected security interest  
40 unless the lien is statutory and the statute expressly provides  
41 otherwise.

336#09-313

42 336.9-313 PRIORITY OF SECURITY INTERESTS IN FIXTURES.

43 (1) In this section and in the provisions of part 4 of this  
44 article referring to fixture filing, unless the context  
45 otherwise requires

46 (a) goods are "fixtures" when they become so related to  
47 particular real estate that an interest in them arises under  
48 real estate law.

49 (b) a "fixture filing" is the filing in the office where a  
50 mortgage on the real estate would be filed or recorded of a  
51 financing statement covering goods which are or are to become  
52 fixtures and conforming to the requirements of subsection (5) of  
53 section 336.9-402 except in the case of a fixture filing by a  
54 transmitting utility, which shall be governed by subsection (5)  
55 of section 336.9-401.

56 (c) a mortgage is a "construction mortgage" to the extent  
57 that it secures an obligation incurred for the construction of  
58 an improvement on land including the acquisition cost of the  
59 land, if the recorded writing so indicates.

60 (2) A security interest under this article may be created  
61 in goods which are fixtures or may continue in goods which  
62 become fixtures, but no security interest exists under this  
63 article in ordinary building materials incorporated into an  
64 improvement on land.

65 (3) This article does not prevent creation of an  
66 encumbrance upon fixtures pursuant to real estate law.

67 (4) A perfected security interest in fixtures has priority  
68 over the conflicting interest of an encumbrancer or owner of the  
69 real estate where

70 (a) the security interest is a purchase money security  
71 interest, the interest of the encumbrancer or owner arises  
72 before the goods become fixtures, the security interest is  
73 perfected by a fixture filing before the goods become fixtures

1 or within ten days thereafter, and the debtor has an interest of  
2 record in the real estate or is in possession of the real  
3 estate; or

4 (b) the security interest is perfected by a fixture filing  
5 before the interest of the encumbrancer or owner is of record,  
6 the security interest has priority over any conflicting interest  
7 of a predecessor in title of the encumbrancer or owner, and the  
8 debtor has an interest of record in the real estate or is in  
9 possession of the real estate; or

10 (c) the fixtures are readily removable factory or office  
11 machines or readily removable replacements of domestic  
12 appliances which are consumer goods, and before the goods become  
13 fixtures the security interest is perfected by any method  
14 permitted by this article; or

15 (d) the conflicting interest is a lien on the real estate  
16 obtained by legal or equitable proceedings after the security  
17 interest was perfected by any method permitted by this article.

18 (5) A security interest in fixtures, whether or not  
19 perfected, has priority over the conflicting interest of an  
20 encumbrancer or owner of the real estate where

21 (a) the encumbrancer or owner has consented in writing to  
22 the security interest or has disclaimed an interest in the goods  
23 as fixtures; or

24 (b) the debtor has a right to remove the goods as against  
25 the encumbrancer or owner. If the debtor's right terminates,  
26 the priority of the security interest continues for a reasonable  
27 time.

28 (6) Notwithstanding paragraph (a) of subsection (4) but  
29 otherwise subject to subsections (4) and (5), a security  
30 interest in fixtures is subordinate to a construction mortgage  
31 recorded before the goods become fixtures if the goods become  
32 fixtures before the completion of the construction. To the  
33 extent that it is given to refinance a construction mortgage, a  
34 mortgage has this priority to the same extent as the  
35 construction mortgage.

36 (7) In cases not within the preceding subsections, a  
37 security interest in fixtures is subordinate to the conflicting  
38 interest of an encumbrancer or owner of the related real estate  
39 who is not the debtor.

40 (8) When the secured party has priority over all owners and  
41 encumbrancers of the real estate, he the secured party may, on  
42 default, subject to the provisions of part 5, remove ~~his~~  
43 collateral from the real estate but he the secured party must  
44 reimburse any encumbrancer or owner of the real estate who is  
45 not the debtor and who has not otherwise agreed for the cost of  
46 repair of any physical injury, but not for any diminution in  
47 value of the real estate caused by the absence of the goods  
48 removed or by any necessity for replacing them. A person  
49 entitled to reimbursement may refuse permission to remove until  
50 the secured party gives adequate security for the performance of  
51 this obligation.

336#09-314

52 336.9-314 ACCESSIONS.

53 (1) A security interest in goods which attaches before they  
54 are installed in or affixed to other goods takes priority as to  
55 the goods installed or affixed (called in this section  
56 "accessions") over the claims of all persons to the whole except  
57 as stated in subsection (3) and subject to section 336.9-315(1).

58 (2) A security interest which attaches to goods after they  
59 become part of a whole is valid against all persons subsequently  
60 acquiring interests in the whole except as stated in subsection  
61 (3) but is invalid against any person with an interest in the  
62 whole at the time the security interest attaches to the goods  
63 who has not in writing consented to the security interest or  
64 disclaimed an interest in the goods as part of the whole.

65 (3) The security interests described in subsections (1) and  
66 (2) do not take priority over

67 (a) a subsequent purchaser for value of any interest in the  
68 whole; or

69 (b) a creditor with a lien on the whole subsequently  
70 obtained by judicial proceedings; or

71 (c) a creditor with a prior perfected security interest in  
72 the whole to the extent that he the creditor makes subsequent  
73 advances

74 if the subsequent purchase is made, the lien by judicial  
75 proceedings obtained, or the subsequent advance under the prior

\*  
\*  
\*

\*

1 perfected security interest is made or contracted for without  
 2 knowledge of the security interest and before it is perfected.  
 3 A purchaser of the whole at a foreclosure sale other than the  
 4 holder of a perfected security interest purchasing at ~~his~~ the  
 5 holder's own foreclosure sale is a subsequent purchaser within  
 6 this section.

\*  
\*

7 (4) When under subsections (1) or (2) and (3) a secured  
 8 party has an interest in accessions which has priority over the  
 9 claims of all persons who have interests in the whole, ~~he~~ the  
 10 secured party may on default subject to the provisions of part 5  
 11 remove ~~his~~ collateral from the whole but ~~he~~ the secured party  
 12 must reimburse any encumbrancer or owner of the whole who is not  
 13 the debtor and who has not otherwise agreed for the cost of  
 14 repair of any physical injury but not for any diminution in  
 15 value of the whole caused by the absence of the goods removed or  
 16 by any necessity for replacing them. A person entitled to  
 17 reimbursement may refuse permission to remove until the secured  
 18 party gives adequate security for the performance of this  
 19 obligation.

\*  
\*  
\*

336#09-318

20 336.9-318 DEFENSES AGAINST ASSIGNEE; MODIFICATION OF  
 21 CONTRACT AFTER NOTIFICATION OF ASSIGNMENT; TERM PROHIBITING  
 22 ASSIGNMENT INEFFECTIVE; IDENTIFICATION AND PROOF OF ASSIGNMENT.

23 (1) Unless an account debtor has made an enforceable  
 24 agreement not to assert defenses or claims arising out of a sale  
 25 as provided in section 336.9-206 the rights of an assignee are  
 26 subject to

27 (a) all the terms of the contract between the account  
 28 debtor and the assignor and any defense or claim arising  
 29 therefrom; and

30 (b) any other defense or claim of the account debtor  
 31 against the assignor which accrues before the account debtor  
 32 receives notification of the assignment.

33 (2) So far as the right to payment or a part thereof under  
 34 an assigned contract has not be fully earned by performance and  
 35 notwithstanding notification of the assignment any modification  
 36 of or substitution for the contract made in good faith and in  
 37 accordance with reasonable commercial standards is effective  
 38 against an assignee unless the account debtor has otherwise  
 39 agreed but the assignee acquires corresponding rights under the  
 40 modified or substituted contract. The assignment may provide  
 41 that such modification or substitution is a breach by the  
 42 assignor.

43 (3) The account debtor is authorized to pay the assignor  
 44 until the account debtor receives notification that the amount  
 45 due or to become due has been assigned and that payment is to be  
 46 made to the assignee. A notification which does not reasonably  
 47 identify the rights assigned is ineffective. If requested by the  
 48 account debtor, the assignee must seasonably furnish reasonable  
 49 proof that the assignment has been made and unless ~~he~~ the  
 50 assignee does so the account debtor may pay the assignor.

\*  
\*

51 (4) A term in any contract between an account debtor and an  
 52 assignor is ineffective if it prohibits assignment of an account  
 53 or prohibits creation of a security interest in a general  
 54 intangible for money due or to become due or requires the  
 55 account debtor's consent to such assignment or security interest.

336#09-402

56 336.9-402 FORMAL REQUISITES OF FINANCING STATEMENT;  
 57 AMENDMENTS; MORTGAGE AS FINANCING STATEMENT.

58 (1) A financing statement is sufficient if it gives the  
 59 name of the debtor and the secured party, is signed by the  
 60 debtor, gives an address of the secured party from which  
 61 information concerning the security interest may be obtained,  
 62 gives a mailing address of the debtor and contains a statement  
 63 indicating the types or describing the items, of collateral. A  
 64 financing statement may be filed before a security agreement is  
 65 made or a security interest otherwise attaches. When the  
 66 financing statement covers crops growing or to be grown, the  
 67 statement must also contain a description of the real estate  
 68 concerned and the name of the record owner thereof and the crop  
 69 years that are covered by the financing statement. When the  
 70 financing statement covers timber to be cut or covers minerals  
 71 or the like (including oil and gas) or accounts subject to  
 72 subsection (5) of section 336.9-103, or when the financing  
 73 statement is filed as a fixture filing (section 336.9-313) and  
 74 the collateral is goods which are or are to become fixtures, the

1 statement must also comply with subsection (5). A copy of the  
2 security agreement is sufficient as a financing statement if it  
3 contains the above information and is signed by the debtor. A  
4 carbon, photographic or other reproduction of a security  
5 agreement or a financing statement is sufficient as a financing  
6 statement if the security agreement so provides or if the  
7 original has been filed in this state.

8 (2) A financing statement which otherwise complies with  
9 subsection (1) is sufficient when it is signed by the secured  
10 party instead of the debtor when it is filed to perfect a  
11 security interest in

12 (a) collateral already subject to a security interest in  
13 another jurisdiction when it is brought into this state, or when  
14 the debtor's location is changed to this state. Such a  
15 financing statement must state that the collateral was brought  
16 into this state or that the debtor's location was changed to  
17 this state under such circumstances; or

18 (b) proceeds under section 336.9-306 if the security  
19 interest in the original collateral was perfected. Such a  
20 financing statement must describe the original collateral; or

21 (c) collateral as to which the filing has lapsed within one  
22 year; or

23 (d) collateral acquired after a change of name, identity or  
24 corporate structure of the debtor (subsection (7)); or

25 (e) a lien filed pursuant to chapter 514; or

26 (f) collateral which is subject to a filed judgment.

27 (2a) Except for documents filed under clauses (e) and (f),  
28 the reason for the omission of the debtor signature must be  
29 stated on the front of the financing statement.

30 (3) A form substantially as follows is sufficient to comply  
31 with subsection (1):

32 Name of debtor (or assignor)

33 .....

34 Address

35 .....

36 Name of secured party (or assignee)

37 .....

38 Address

39 .....

40 1. This financing statement covers the following types (or  
41 items) of property:

42 (Describe)

43 .....

44 2. (If collateral is crops) The above described crops are  
45 growing or are to be grown on:

46 (Describe real estate and the name of the record owner  
47 thereof) .....

48 .....

49 3. (If applicable) The above goods are to become fixtures  
50 on

51 (Describe real estate)..... and this  
52 financing statement is to be filed for record in the real estate  
53 records. (If the debtor does not have an interest of record)

54 The name of a record owner is .....

55 4. (If products of collateral are claimed)

56 Products of the collateral are also covered.

57 Use whichever signature line is applicable.

58 Signature of debtor (or assignor)

59 .....

60 Signature of secured party (or assignee)

61 .....

62 (4) A financing statement may be amended by filing a  
63 writing signed by both the debtor and the secured party. If the  
64 sole purpose of the amendment is to change the name or address  
65 of the secured party, only the secured party need sign the  
66 amendment. A writing is sufficient if it sets forth the name  
67 and address of the debtor and secured party as those items  
68 appear on the original financing statement or the most recently  
69 filed amendment, the file number and date of filing of the  
70 financing statement. An amendment does not extend the period of  
71 effectiveness of a financing statement. If any amendment adds  
72 collateral, it is effective as to the added collateral only from  
73 the filing date of the amendment. In this article, unless the  
74 context otherwise requires, the term "financing statement" means  
75 the original financing statement and any amendments.

76 (5) A financing statement covering timber to be cut or

1 covering minerals or the like (including oil and gas) or  
 2 accounts subject to subsection (5) of section 336.9-103, or a  
 3 financing statement filed as a fixture filing (section  
 4 336.9-313) where the debtor is not a transmitting utility, must  
 5 show that it covers this type of collateral, must recite that it  
 6 is to be filed for record in the real estate records, and the  
 7 financing statement must contain a description of the real  
 8 estate sufficient if it were contained in a mortgage of the real  
 9 estate to give constructive notice of the mortgage under the law  
 10 of this state. If the debtor does not have an interest of  
 11 record in the real estate, the financing statement must show the  
 12 name of a record owner. No description of the real estate or  
 13 the name of the record owner thereof is required for a fixture  
 14 filing where the debtor is a transmitting utility.

15 Notwithstanding the foregoing a general description of the real  
 16 estate is sufficient for a fixture filing where a railroad is  
 17 the record owner of the real estate on which the fixtures are or  
 18 are to be located; and for the purposes of this subsection, the  
 19 requirement of a general description is satisfied if the fixture  
 20 filing (1) identifies the section, township and range numbers of  
 21 the county in which the land is located; (2) identifies the  
 22 quarter-quarter of the section that the land is located in; (3)  
 23 indicates the name of the record owner of the real estate; and  
 24 (4) states the street address of the real estate if one exists.

25 (6) A mortgage is effective as a financing statement filed  
 26 as a fixture filing from the date of its recording if (a) the  
 27 goods are described in the mortgage by item or type, (b) the  
 28 goods are or are to become fixtures related to the real estate  
 29 described in the mortgage, (c) the mortgage complies with the  
 30 requirements for a financing statement in this section other  
 31 than a recital that it is to be filed in the real estate  
 32 records, and (d) the mortgage is duly recorded. No fee with  
 33 reference to the financing statement is required other than the  
 34 regular recording and satisfaction fees with respect to the  
 35 mortgage.

36 (7) A financing statement sufficiently shows the name of  
 37 the debtor if it gives the individual, partnership or corporate  
 38 name of the debtor, whether or not it adds other trade names or  
 39 the names of partners. Where the debtor so changes ~~his~~ a  
 40 personal name or in the case of an organization its name,  
 41 identity or corporate structure that a filed financing statement  
 42 becomes seriously misleading, the filing is not effective to  
 43 perfect a security interest in collateral acquired by the debtor  
 44 more than four months after the change, unless a new appropriate  
 45 financing statement is filed before the expiration of that  
 46 time. A filed financing statement remains effective with  
 47 respect to collateral transferred by the debtor even though the  
 48 secured party knows of or consents to the transfer.

49 (8) A financing statement, amendment, continuation,  
 50 assignment, release, or termination substantially complying with  
 51 the requirements of this section is effective even though it  
 52 contains minor errors which are not seriously misleading.

336#09-403

53 336.9-403 WHAT CONSTITUTES FILING; DURATION OF FILING;  
 54 EFFECT OF LAPSED FILING; DUTIES OF FILING OFFICER.

55 (1) Presentation for filing of a financing statement and  
 56 tender of the filing fee or acceptance of the statement by the  
 57 filing officer constitutes filing under this article.

58 (2) Except as provided in subsection (6) a filed financing  
 59 statement is effective for a period of five years from the date  
 60 of filing. The effectiveness of a filed financing statement  
 61 lapses on the expiration of the five-year period unless a  
 62 continuation statement is filed prior to the lapse. If a  
 63 security interest perfected by filing exists at the time  
 64 insolvency proceedings are commenced by or against the debtor,  
 65 the security interest remains perfected until termination of the  
 66 insolvency proceedings and thereafter for a period of 60 days or  
 67 until expiration of the five-year period, whichever occurs later  
 68 regardless of whether the financing statement filed as to that  
 69 security interest is destroyed by the filing officer pursuant to  
 70 subsection (3). Upon lapse the security interest becomes  
 71 unperfected, unless it is perfected without filing. If the  
 72 security interest becomes unperfected upon lapse, it is deemed  
 73 to have been unperfected as against a person who became a  
 74 purchaser or lien creditor before lapse.

75 (3) A continuation statement may be filed by the secured

\*  
\*

1 party within six months prior to the expiration of the five-year  
2 period specified in subsection (2). Any such continuation  
3 statement must be signed by the secured party, set forth the  
4 name and address of the debtor and secured party as those items  
5 appear on the original financing statement or the most recently  
6 filed amendment, identify the original statement by file number  
7 and filing date, and state that the original statement is still  
8 effective. A continuation statement signed by a person other  
9 than the secured party of record must be accompanied by a  
10 separate written statement of assignment signed by the secured  
11 party of record and complying with subsection (2) of section  
12 336.9-405, including payment of the required fee. Upon timely  
13 filing of the continuation statement, the effectiveness of the  
14 original statement is continued for five years after the last  
15 date to which the filing was effective whereupon it lapses in  
16 the same manner as provided in subsection (2) unless another  
17 continuation statement is filed prior to such lapse. Succeeding  
18 continuation statements may be filed in the same manner to  
19 continue the effectiveness of the original statement. Unless a  
20 statute on disposition of public records provides otherwise, the  
21 filing officer may remove a lapsed statement from the files and  
22 destroy it immediately if he the officer has retained a \*  
23 microfilm or other photographic record, or in other cases after  
24 one year after the lapse. The filing officer shall so arrange  
25 matters by physical annexation of financing statements to  
26 continuation statements or other related filings, or by other  
27 means, that if he the officer physically destroys the financing \*  
28 statements of a period more than five years past, those which  
29 have been continued by a continuation statement or which are  
30 still effective under subsection (6) shall be retained. If  
31 insolvency proceedings are commenced by or against the debtor,  
32 the secured party shall notify the filing officer both upon  
33 commencement and termination of the proceedings, and the filing  
34 officer shall not destroy any financing statements filed with  
35 respect to the debtor until termination of the insolvency  
36 proceedings. The security interest remains perfected until  
37 termination of the insolvency proceedings and thereafter for a  
38 period of 60 days or until expiration of the five-year period,  
39 whichever occurs later.

40 (4) Except as provided in subsection (7) a filing officer  
41 shall mark each statement with a file number and with the date  
42 and hour of filing and shall hold the statement or a microfilm  
43 or other photographic copy thereof for public inspection. In  
44 addition the filing officer shall index the statements according  
45 to the name of the debtor and shall note in the index the file  
46 number and the address of the debtor given in the statement.

47 (5) The secretary of state shall prescribe uniform forms  
48 for statements and samples thereof shall be furnished to all  
49 filing officers in the state. The uniform fee for filing and  
50 indexing and for stamping a copy furnished by the secured party  
51 to show the date and place of filing for an original financing  
52 statement or for a continuation statement shall be \$5 if the  
53 statement is in the standard form prescribed by the secretary of  
54 state and otherwise shall be \$10, plus in each case, if the  
55 financing statement is subject to subsection (5) of section  
56 336.9-402, \$5. An additional fee of \$5 shall be collected if  
57 more than one name is required to be indexed or if the secured  
58 party ~~at his option~~ shows chooses to show a trade name for any \*  
59 debtor listed. There shall be no fee collected for the filing  
60 of an amendment to a financing statement if the amendment is in  
61 the standard form prescribed by the secretary of state and does  
62 not add additional debtor names to the financing statement. The  
63 fee for an amendment adding additional debtor names shall be \$5  
64 if the amendment is in the form prescribed by the secretary of  
65 state and, if otherwise, \$10. The fee for an amendment which is  
66 not in the form prescribed by the secretary of state but which  
67 does not add additional names shall be \$5.

68 The secretary of state shall adopt rules for filing,  
69 amendment, continuation, termination, removal, and destruction  
70 of financing statements.

71 (6) If the debtor is a transmitting utility (subsection (5)  
72 of section 336.9-401) and a filed financing statement so states,  
73 it is effective until a termination statement is filed. A real  
74 estate mortgage which is effective as a fixture filing under  
75 subsection (6) of section 336.9-402 remains effective as a  
76 fixture filing until the mortgage is released or satisfied of

1 record or its effectiveness otherwise terminates as to the real  
2 estate.

3 (7) When a financing statement covers timber to be cut or  
4 covers minerals or the like (including oil and gas) or accounts  
5 subject to subsection (5) of section 336.9-103, or is filed as a  
6 fixture filing, it shall be filed for record and the filing  
7 officer shall index it under the names of the debtor and any  
8 owner of record shown on the financing statement in the same  
9 fashion as if they were the mortgagors in a mortgage of the real  
10 estate described, and, to the extent that the law of this state  
11 provides for indexing of mortgages under the name of the  
12 mortgagee, under the name of the secured party as if ~~he~~ the  
13 secured party were the mortgagee thereunder, or, for filing  
14 offices other than the secretary of state, where indexing is by  
15 description in the same fashion as if the financing statement  
16 were a mortgage of the real estate described. If requested of  
17 the filing officer on the financing statement, a financing  
18 statement filed for record as a fixture filing in the same  
19 office where nonfixture filings are made is effective, without a  
20 dual filing, as to collateral listed thereon for which filing is  
21 required in such office pursuant to section 336.9-401 (1) (a);  
22 in such case, the filing officer shall also index the recorded  
23 statement in accordance with subsection (4) using the recording  
24 data in lieu of a file number.

25 (8) The fees provided for in this article shall supersede  
26 the fees for similar services otherwise provided for by law  
27 except in the case of security interests filed in connection  
28 with a certificate of title on a motor vehicle.

336#09-404

29 336.9-404 TERMINATION STATEMENT.

30 (1) If a financing statement covering consumer goods is  
31 filed on or after January 1, 1977, then within one month or  
32 within ten days following written demand by the debtor after  
33 there is no outstanding secured obligation and no commitment to  
34 make advances, incur obligations or otherwise give value, the  
35 secured party must file with each filing officer with whom the  
36 financing statement was filed, a termination statement to the  
37 effect that ~~he~~ the secured party no longer claims a security  
38 interest under the financing statement. The termination  
39 statement must set forth the name and address of the debtor and  
40 secured party as those items appear on the original financing  
41 statement or the most recently filed amendment; identify the  
42 original financing statement by file number and filing date; and  
43 be signed by the secured party. In other cases whenever there  
44 is no outstanding secured obligation and no commitment to make  
45 advances, incur obligations, or otherwise give value, the  
46 secured party must on written demand by the debtor send the  
47 debtor, for each filing officer with whom the financing  
48 statement was filed, a termination statement to the effect that  
49 ~~he~~ the secured party no longer claims a security interest under  
50 the financing statement, which shall be identified by file  
51 number. A termination statement signed by a person other than  
52 the secured party of record must be accompanied by a separate  
53 written statement of assignment signed by the secured party of  
54 record and complying with subsection (2) of section 336.9-405,  
55 including payment of the required fee. If the affected secured  
56 party fails to file such a termination statement as required by  
57 this subsection, or to send such a termination statement within  
58 ten days after proper demand therefor ~~he~~ the secured party shall  
59 be liable to the debtor for \$100, and in addition for any loss  
60 caused to the debtor by such failure.

61 (2) On ~~presentation to the filing officer of being~~  
62 presented with such a termination statement ~~he~~ the filing  
63 officer must note it in the index. If ~~he has received the a~~  
64 duplicate termination statement ~~in duplicate~~ is provided, ~~he~~  
65 the filing officer shall return one copy of the termination  
66 statement to the secured party stamped to show the time of  
67 receipt thereof. If the filing officer has a microfilm or other  
68 photographic record of the financing statement, and of any  
69 related continuation statement, statement of assignment and  
70 statement of release, ~~he~~ the filing officer may remove the  
71 originals from the files at any time after receipt of the  
72 termination statement, or ~~if he has~~ having no such record, ~~he~~  
73 the filing officer may remove them from the files at any time  
74 after one year after receipt of the termination statement.

75 (3) There shall be no fee collected for the filing of a

1 termination if the termination statement is in the standard form  
 2 prescribed by the secretary of state and otherwise shall be \$5,  
 3 plus in each case, if the original financing statement was  
 4 subject to subsection (5) of section 336.9-402, the fee  
 5 prescribed by section 357.18, subdivision 1, clause (1).

336#09-405

6 336.9-405 ASSIGNMENT OF SECURITY INTEREST; DUTIES OF  
 7 FILING OFFICER; FEES.

8 (1) A financing statement may disclose an assignment of a  
 9 security interest in the collateral described in the financing  
 10 statement by indication in the financing statement of the name  
 11 and address of the assignee or by an assignment itself or a copy  
 12 thereof on the face of the statement. On presentation to the  
 13 filing officer of such a financing statement the filing officer  
 14 shall mark the same as provided in section 336.9-403(4). The  
 15 uniform fee for filing, indexing, and furnishing filing data for  
 16 a financing statement so indicating an assignment shall be the  
 17 same as the fee prescribed in section 336.9-403, clause (5).

18 (2) A secured party of record may record an assignment of  
 19 all or a part of ~~his~~ the secured party's rights under a \*  
 20 financing statement by the filing in the place where the  
 21 original financing statement was filed of a separate written  
 22 statement of assignment signed by the secured party of record,  
 23 setting forth the name and address of the secured party of  
 24 record and the debtor as those items appear on the original  
 25 financing statement or the most recently filed amendment,  
 26 identifying the file number and the date of filing of the  
 27 financing statement, giving the name and address of the assignee  
 28 and containing a description of the collateral assigned. A copy  
 29 of the assignment is sufficient as a separate statement if it  
 30 complies with the preceding sentence. On presentation to the  
 31 filing officer of such a separate statement, the filing officer  
 32 shall mark such separate statement with the date and hour of the  
 33 filing. ~~He~~ The filing officer shall note the assignment on the \*  
 34 index of the financing statement, or in the case of a fixture  
 35 filing, or a filing covering timber to be cut, or covering  
 36 minerals or the like (including oil and gas) or accounts subject  
 37 to subsection (5) of section 336.9-103, ~~he~~. The filing officer \*  
 38 shall also index the assignment under the name of the assignor \*  
 39 as grantor and, to the extent that the law of this state  
 40 provides for indexing the assignment of a mortgage under the  
 41 name of the assignee, ~~he shall~~ index the assignment of the \*  
 42 financing statement under the name of the assignee. The uniform  
 43 fee for filing, indexing, and furnishing filing data about such  
 44 a separate statement of assignment shall be \$5 if the statement  
 45 is in the standard form prescribed by the secretary of state and  
 46 otherwise shall be \$10, plus in each case, if the original  
 47 financing statement was subject to subsection (5) of section  
 48 336.9-402, the fee prescribed by section 357.18, subdivision 1,  
 49 clause (1). An additional fee of \$5 shall be charged if there  
 50 is more than one name against which the statement of assignment  
 51 is required to be indexed. Notwithstanding the provisions of  
 52 this subsection, an assignment of record of a security interest  
 53 in a fixture contained in a mortgage effective as a fixture  
 54 filing (subsection (6) of section 336.9-402) may be made only by  
 55 an assignment of the mortgage in the manner provided by the law  
 56 of this state other than Laws 1976, chapter 135.

57 (3) After the disclosure or filing of an assignment under  
 58 this section, the assignee is the secured party of record.

336#09-406

59 336.9-406 RELEASE OF COLLATERAL; DUTIES OF FILING  
 60 OFFICER; FEES.

61 A secured party of record may by ~~his~~ signed statement \*  
 62 release all or a part of any collateral described in a filed  
 63 financing statement. The statement of release is sufficient if  
 64 it contains a description of the collateral being released, the  
 65 name and address of the debtor and secured party as those items  
 66 appear on the original financing statement or the most recently  
 67 filed amendment, and identifies the original financing statement  
 68 by file number and filing date. A statement of release signed  
 69 by a person other than the secured party of record must be  
 70 accompanied by a separate written statement of assignment signed  
 71 by the secured party of record and complying with subsection (2)  
 72 of section 336.9-405, including payment of the required fee.  
 73 Upon ~~presentation of~~ being presented with such a statement of \*  
 74 release to the filing officer ~~he~~ shall mark the statement with \*



1 the hour and date of filing and shall note the same upon the  
 2 margin of the index of the filing of the financing statement.  
 3 There shall be no fee for filing and noting such a statement of  
 4 release if the statement is in the standard form prescribed by  
 5 the secretary of state and otherwise shall be \$5, plus in each  
 6 case, if the original financing statement was subject to  
 7 subsection (5) of section 336.9-402, the fee prescribed by  
 8 section 357.18, subdivision 1, clause (1).

336#09-407

9 336.9-407 INFORMATION FROM FILING OFFICER.

10 (1) If the person filing any financing statement,  
 11 termination statement, statement of assignment, or statement of  
 12 release, furnishes the filing officer a copy thereof, the filing  
 13 officer shall upon request note upon the copy the file number  
 14 and date and hour of the filing of the original and deliver or  
 15 send the copy to such person.

16 (2) Upon request of any person, the filing officer shall  
 17 conduct a search of ~~his~~ a file for any effective financing \*  
 18 statements naming a particular debtor and any statement of \*  
 19 assignment thereof. He The filing officer shall report ~~what he~~ \*  
 20 finds the findings as of that date and hour by issuing: \*

21 (a) ~~his~~ a certificate listing the file number, date, and \*  
 22 hour of each filing and the names and addresses of each secured \*  
 23 party therein;

24 (b) photocopies of the original documents on file; or,

25 (c) upon request, both ~~his~~ the certificate and photocopies \*  
 26 of the statements.

27 The uniform fee for conducting the search and for preparing  
 28 a certificate showing up to five listed filings or for preparing  
 29 up to five photocopies of original documents, or any combination  
 30 of up to five listed filings and photocopies, shall be \$5 if the  
 31 request is in the standard form prescribed by the secretary of  
 32 state and otherwise shall be \$10. Another fee, at the same  
 33 rate, shall also be charged for conducting a search and  
 34 preparing a certificate showing federal and state tax liens on  
 35 file with the filing officer naming a particular debtor. There  
 36 shall be an additional fee of 50 cents for each financing  
 37 statement and each statement of assignment or tax lien listed on  
 38 the certificate and for each photocopy ~~that he prepares~~ prepared \*  
 39 in excess of the first five.

336#09-410

40 336.9-410 DESTRUCTION OF OLD RECORDS.

41 Unless a filing officer has notice of an action pending  
 42 relative thereto, he the filing officer may remove from the \*  
 43 files and destroy

44 (a) a lapsed financing statement, a lapsed continuation  
 45 statement, a statement of assignment or release relating to  
 46 either, and any index of any of them, one year or more after  
 47 lapse; and

48 (b) a termination statement and the index on which it is  
 49 noted, three years or more after the filing of the termination  
 50 statement.

336#09-501

51 336.9-501 DEFAULT; PROCEDURE WHEN SECURITY AGREEMENT  
 52 COVERS BOTH REAL AND PERSONAL PROPERTY.

53 (1) When a debtor is in default under a security agreement,  
 54 a secured party has the rights and remedies provided in this  
 55 part and except as limited by subsection (3) those provided in  
 56 the security agreement. He The secured party may reduce ~~his~~ a \*  
 57 claim to judgment, foreclose, or otherwise enforce the security  
 58 interest by any available judicial procedure. If the collateral  
 59 is documents the secured party may proceed either as to the  
 60 documents or as to the goods covered thereby. A secured party  
 61 in possession has the rights, remedies, and duties provided in  
 62 section 336.9-207. The rights and remedies referred to in this  
 63 subsection are cumulative.

64 (2) After default, the debtor has the rights and remedies  
 65 provided in this part, those provided in the security agreement,  
 66 and those provided in section 336.9-207.

67 (3) To the extent that they give rights to the debtor and  
 68 impose duties on the secured party, the rules stated in the  
 69 subsections referred to below may not be waived or varied except  
 70 as provided with respect to compulsory disposition of collateral  
 71 (subsection (3) of section 336.9-504 and section 336.9-505) and  
 72 with respect to redemption of collateral (section 336.9-506) but  
 73 the parties may by agreement determine the standards by which

1 the fulfillment of these rights and duties is to be measured if  
2 such standards are not manifestly unreasonable:

3 (a) Subsection (2) of section 336.9-502 and subsection (2)  
4 of section 336.9-504 insofar as they require accounting for  
5 surplus proceeds of collateral;

6 (b) Subsection (3) of section 336.9-504 and subsection (1)  
7 of section 336.9-505 which deal with disposition of collateral;

8 (c) Subsection (2) of section 336.9-505 which deals with  
9 acceptance of collateral as discharge of obligation;

10 (d) Section 336.9-506 which deals with redemption of  
11 collateral; and

12 (e) Subsection (1) of section 336.9-507 which deals with  
13 the secured party's liability for failure to comply with this  
14 part.

15 (4) If the security agreement covers both real and personal  
16 property, the secured party may proceed under this part as to  
17 the personal property or ~~he~~ may proceed as to both the real and  
18 the personal property in accordance with his the secured party's  
19 rights and remedies in respect of the real property in which  
20 case the provisions of this part do not apply. \*

21 (5) When a secured party has reduced his a claim to  
22 judgment the lien of any levy which may be made upon his  
23 collateral by virtue of any execution based upon the judgment  
24 shall relate back to the date of the perfection of the security  
25 interest in such collateral. A judicial sale, pursuant to such  
26 execution, is a foreclosure of the security interest by judicial  
27 procedure within the meaning of this section, and the secured  
28 party may purchase at the sale and thereafter hold the  
29 collateral free of any other requirements of this article. \*

336#09-502

30 336.9-502 COLLECTION RIGHTS OF SECURED PARTY.

31 (1) When so agreed and in any event on default the secured  
32 party is entitled to notify an account debtor or the obligor on  
33 an instrument to make payment to him the secured party whether  
34 or not the assignor was theretofore making collections on the  
35 collateral, and also to take control of any proceeds to which ~~he~~  
36 the secured party is entitled under section 336.9-306. \*

37 (2) A secured party who by agreement is entitled to charge  
38 back uncollected collateral or otherwise to full or limited  
39 recourse against the debtor and who undertakes to collect from  
40 the account debtors or obligors must proceed in a commercially  
41 reasonable manner and may deduct his reasonable expenses of  
42 realization from the collections. If the security agreement  
43 secures an indebtedness, the secured party must account to the  
44 debtor for any surplus, and, unless otherwise agreed, the debtor  
45 is liable for any deficiency. But, if the underlying  
46 transaction was a sale of accounts or chattel paper, the debtor  
47 is entitled to any surplus or is liable for any deficiency only  
48 if the security agreement so provides. \*

336#09-504

49 336.9-504 SECURED PARTY'S RIGHT TO DISPOSE OF COLLATERAL  
50 AFTER DEFAULT; EFFECT OF DISPOSITION.

51 (1) A secured party after default may sell, lease, or  
52 otherwise dispose of any or all of the collateral in its then  
53 condition or following any commercially reasonable preparation  
54 or processing. Any sale of goods is subject to the article on  
55 sales (article 2). The proceeds of disposition shall be applied  
56 in the order following to

57 (a) the reasonable expenses of retaking, holding, preparing  
58 for sale or lease, selling, leasing and the like, and, to the  
59 extent provided for in the agreement and not prohibited by law,  
60 the reasonable attorneys' fees and legal expenses incurred by  
61 the secured party;

62 (b) the satisfaction of indebtedness secured by the  
63 security interest under which the disposition is made;

64 (c) the satisfaction of indebtedness secured by any  
65 subordinate security interest in the collateral if written  
66 notification of demand therefor is received before distribution  
67 of the proceeds is completed. If requested by the secured  
68 party, the holder of a subordinate security interest must  
69 seasonably furnish reasonable proof of his the holder's  
70 interest, and unless ~~he~~ the holder does so, the secured party  
71 need not comply with his the demand. \*

72 (2) If the security interest secures an indebtedness, the  
73 secured party must account to the debtor for any surplus, and,  
74 unless otherwise agreed, the debtor is liable for any

1 deficiency. But if the underlying transaction was a sale of  
2 accounts, contract rights, or chattel paper, the debtor is  
3 entitled to any surplus or is liable for any deficiency only if  
4 the security agreement so provides.

5 (3) Disposition of the collateral may be by public or  
6 private proceedings and may be made by way of one or more  
7 contracts. Sale or other disposition may be as a unit or in  
8 parcels and at any time and place and on any terms but every  
9 aspect of the disposition including the method, manner, time,  
10 place and terms must be commercially reasonable. Unless  
11 collateral is perishable or threatens to decline speedily in  
12 value or is of a type customarily sold on a recognized market,  
13 reasonable notification of the time and place of any public sale  
14 or reasonable notification of the time after which any private  
15 sale or other intended disposition is to be made shall be sent  
16 by the secured party to the debtor, if he the debtor has not \*  
17 signed after default a statement renouncing or modifying his the \*  
18 right to notification of sale. In the case of consumer goods no  
19 other notification need be sent. In other cases notification  
20 shall be sent to any other secured party from whom the secured  
21 party has received (before sending his notification to the \*  
22 debtor or before the debtor's renunciation of his rights) \*  
23 written notice of a claim of an interest in the collateral. The  
24 secured party may buy at any public sale and if the collateral  
25 is of a type customarily sold in a recognized market or is of a  
26 type which is the subject of widely distributed standard price  
27 quotations he the secured party may buy at private sale. \*

28 (4) When collateral is disposed of by a secured party after  
29 default, the disposition transfers to a purchaser for value all  
30 of the debtor's rights therein, discharges the security interest  
31 under which it is made and any security interest or lien  
32 subordinate thereto. The purchaser takes free of all such  
33 rights and interests even though the secured party fails to  
34 comply with the requirements of this part or of any judicial  
35 proceedings

36 (a) in the case of a public sale, if the purchaser has no  
37 knowledge of any defects in the sale and if he the purchaser \*  
38 does not buy in collusion with the secured party, other bidders,  
39 or the person conducting the sale; or

40 (b) in any other case, if the purchaser acts in good faith.

41 (5) A person who is liable to a secured party under a  
42 guaranty, endorsement, repurchase agreement, or the like and who  
43 receives a transfer of collateral from the secured party or is  
44 subrogated to his the secured party's rights has thereafter the \*  
45 rights and duties of the secured party. Such a transfer of  
46 collateral is not a sale or disposition of the collateral under  
47 this article.

336#09-505

48 336.9-505 COMPULSORY DISPOSITION OF COLLATERAL;  
49 ACCEPTANCE OF THE COLLATERAL AS DISCHARGE OF OBLIGATION.

50 (1) If the debtor has paid 60 percent of the cash price in  
51 the case of a purchase money security interest in consumer goods  
52 or 60 percent of the loan in the case of another security  
53 interest in consumer goods, and has not signed after default a  
54 statement renouncing or modifying his the debtor's rights under \*  
55 this part a secured party who has taken possession of collateral  
56 must dispose of it under section 336.9-504 and if he the secured \*  
57 party fails to do so within 90 days after he-takes taking \*  
58 possession the debtor at-his-option either may recover in \*  
59 conversion or under section 336.9-507(1) on secured party's  
60 liability.

61 (2) In any other case involving consumer goods or any other  
62 collateral a secured party in possession may, after default,  
63 propose to retain the collateral in satisfaction of the  
64 obligation. Written notice of such proposal shall be sent to  
65 the debtor if he the debtor has not signed after default a \*  
66 statement renouncing or modifying his the debtor's rights under \*  
67 this subsection. In the case of consumer goods no other notice  
68 need be given. In other cases notice shall be sent to any other  
69 secured party from whom the secured party has received (before  
70 sending his notice to the debtor or before the debtor's \*  
71 renunciation of his rights) written notice of a claim of an \*  
72 interest in the collateral. If the secured party receives  
73 objection in writing from a person entitled to receive  
74 notification within 21 days after the notice was sent, the  
75 secured party must dispose of the collateral under section

1 336.9-504. In the absence of such written objection the secured  
2 party may retain the collateral in satisfaction of the debtor's  
3 obligation.

336#09-506

4 336.9-506 DEBTOR'S RIGHT TO REDEEM COLLATERAL.

5 At any time before the secured party has disposed of  
6 collateral or entered into a contract for its disposition under  
7 section 336.9-504 or before the obligation has been discharged  
8 under section 336.9-505(2) the debtor or any other secured party  
9 may unless otherwise agreed in writing after default redeem the  
10 collateral by tendering fulfillment of all obligations secured  
11 by the collateral as well as the expenses reasonably incurred by  
12 the secured party in retaking, holding and preparing the  
13 collateral for disposition, in arranging for the sale, and, to  
14 the extent provided in the agreement and not prohibited by law,  
15 ~~his~~ reasonable attorneys' fees and legal expenses. \*

336#09-507

16 336.9-507 SECURED PARTY'S LIABILITY FOR FAILURE TO  
17 COMPLY WITH THIS PART.

18 (1) If it is established that the secured party is not  
19 proceeding in accordance with the provisions of this part  
20 disposition may be ordered or restrained on appropriate terms  
21 and conditions. If the disposition has occurred the debtor or  
22 any person entitled to notification or whose security interest  
23 has been made known to the secured party prior to the  
24 disposition has a right to recover from the secured party any  
25 loss caused by a failure to comply with the provisions of this  
26 part. If the collateral is consumer goods, the debtor has a  
27 right to recover in any event an amount not less than the credit  
28 service charge plus ten percent of the principal amount of the  
29 debt or the time price differential plus ten percent of the cash  
30 price.

31 (2) The fact that a better price could have been obtained  
32 by a sale at a different time or in a different method from that  
33 selected by the secured party is not of itself sufficient to  
34 establish that the sale was not made in a commercially  
35 reasonable manner. If the secured party either sells the  
36 collateral in the usual manner in any recognized market therefor  
37 or if ~~he~~ the secured party sells at the price current in such  
38 market at the time of ~~his~~ the sale or if ~~he~~ the secured party  
39 has otherwise sold in conformity with reasonable commercial  
40 practices among dealers in the type of property sold ~~he-has-sold~~  
41 the sale has been made in a commercially reasonable manner. The  
42 principles stated in the two preceding sentences with respect to  
43 sales also apply as may be appropriate to other types of  
44 disposition. A disposition which has been approved in any  
45 judicial proceeding or by any bona fide creditors' committee or  
46 representative of creditors shall conclusively be deemed to be  
47 commercially reasonable, but this sentence does not indicate  
48 that any such approval must be obtained in any case nor does it  
49 indicate that any disposition not so approved is not  
50 commercially reasonable. \*

336#09-508

51 336.9-508 RECORDING PROCEEDINGS OF SALE OF COLLATERAL.

52 Any secured party desiring to perpetuate the evidence of  
53 any sale made under the terms of any security agreement may  
54 within ten days after such a sale file in the appropriate office  
55 for the filing of a financing statement covering the goods sold  
56 a report of the proceedings of the sale, specifying the property  
57 sold and that returned, if any, the amount received, the name of  
58 the purchaser, an itemized statement of all costs and expenses,  
59 the amount applied on the obligation secured, and the amount, if  
60 any, returned to the debtor. The report shall be made by the  
61 person conducting the sale and verified or, if ~~he~~ the person  
62 conducting the sale be an officer, certified by ~~him~~ that  
63 person. An affidavit or officer's certificate of the service or  
64 posting of notice of the sale, executed by the person who served  
65 or posted the notice of sale, may be filed with the report of  
66 the proceedings of the sale. When such a report, affidavit, or  
67 certificate has been filed, it is prima facie evidence of the  
68 facts therein stated. \*

341\*#04S

69 341.04 EXECUTIVE SECRETARY; PERSONNEL.

70 The board of boxing shall have power to appoint, and at its  
71 pleasure remove, an executive secretary and prescribe ~~his~~ the  
72 powers and duties of the office. The executive secretary shall \*

1 be the executive secretary of the board, but shall not be a  
2 member of the board. The board may employ such other personnel  
3 as may be necessary in the performance of its duties.

341\*#11S

4 341.11 RULES AND REGULATIONS.

5 The board shall promulgate rules to govern the holding of  
6 amateur boxing exhibitions within the state.

7 The board shall not promulgate any rules which, if followed  
8 by a participant, would adversely affect ~~his~~ the participant's  
9 amateur status in states other than Minnesota. \*

341\*#115S

10 341.115 PROFESSIONAL BOXING.

11 Any contest, match or exhibition in which cash prizes of \$5  
12 or more or other prizes worth \$100 or more are offered to any  
13 boxer shall comply with all rules of the board of boxing  
14 governing professional boxing. For purposes of this section,  
15 trophies, travel expenses and subsistence expenses shall not be  
16 considered prizes. No boxer participating in these contests,  
17 matches, or exhibitions shall engage in more than 15 rounds of  
18 boxing in a 14-day period. If the boxer loses due to a  
19 technical knockout or is knocked unconscious, ~~he~~ the boxer  
20 cannot fight for a 30-day period. No boxer shall participate in  
21 these contests, matches, or exhibitions unless the boxer has  
22 submitted an affidavit of physical fitness, subscribed and sworn  
23 to under oath, to the board and has been examined by a physician  
24 designated by the board. The affidavit must state that the  
25 boxer has regularly trained for at least 60 days under the  
26 supervision of a second licensed by the board of boxing or a  
27 second or trainer licensed in another jurisdiction or the  
28 equivalent. The examination must include an  
29 electroencephalogram if the boxer has been knocked unconscious  
30 in boxing competition. The examination must also include an eye  
31 examination designed to reveal any retinal defects or damage  
32 that could be aggravated by boxing. The examination shall be  
33 performed at the expense of the promoter.

34 The board may order an electroencephalogram before any  
35 contest, match, or exhibition if it determines that the  
36 examination is necessary to protect the health of the boxer. The  
37 examination must be performed at the expense of the promoter.

341\*#12S

38 341.12 BONDS.

39 Before any license other than an amateur boxing license  
40 shall be granted to any person, club, corporation, or  
41 organization to conduct, hold or give any boxing or sparring  
42 match, or exhibition, such applicant therefor shall execute and  
43 file with the ~~chairman~~ chair of the department of commerce a  
44 bond in the sum of \$2,500 in cities of the first class and  
45 \$1,000 in other communities, to be approved, as to form and  
46 sufficiency of the sureties thereof, by the ~~chairman~~ chair of  
47 the department of commerce, conditioned for the payment of the  
48 five percent of the total gross receipts and license fees herein  
49 provided. Upon the filing and approval of such bond  
50 the ~~chairman~~ chair of the department of commerce shall issue to  
51 such applicant for such license a certificate of such filing and  
52 approval, which shall be by such applicant filed in the office  
53 of the board with its application for such license; and no such  
54 license shall be issued until such certificate shall be so filed. \*

341\*#15S

55 341.15 FAILURE TO REPORT TO THE BOARD.

56 When any individual or organization shall fail to make a  
57 report of receipts of any contest at the time prescribed by the  
58 board of boxing or to pay the fee herein provided, or when such  
59 report is unsatisfactory to the commissioner of finance, ~~he~~ the  
60 commissioner may examine, or cause to be examined, the books and  
61 records of such individual or organization, and subpoena and  
62 examine, under oath, officers and other persons as witnesses for  
63 the purpose of determining the total amount of the gross  
64 receipts for any contest and the amount due pursuant to the  
65 provisions of this chapter, which amount ~~he~~ the commissioner  
66 may, upon and as the result of such examination, fix and  
67 determine. In case of default in the payment of any amount so  
68 ascertained to be due, together with the expense incurred in  
69 making such examination, for a period of 20 days after notice to  
70 such delinquent individual or organization of the amount at  
71 which the same may be fixed by the commissioner of finance, such  
72 delinquent shall, ipso facto, forfeit and be thereby \*

1 disqualified from receiving any new license or any renewal of  
2 license and, in addition, forfeit to the state of Minnesota the  
3 sum of \$500, which may be recovered by the attorney general, in  
4 the name of the state, in the same manner as other penalties are  
5 by law recovered.

343\*#01S

6 343.01 PURPOSES; POWERS; COUNTY ORGANIZATION.  
7 No change for subd 1 to 2

8 Subd. 3. The society must be governed by a board of  
9 directors consisting of seven persons appointed by the  
10 governor. The governor, the commissioner of education, and the  
11 attorney general, or their designees shall serve as ex officio,  
12 nonvoting members of the board. The membership terms,  
13 compensation, removal, and filling of vacancies of board members  
14 other than ex officio members shall be as provided in section  
15 15.0575; provided that the terms of two initial members shall  
16 expire in each of 1979, 1980, and 1981, and the term of the  
17 seventh initial member shall expire in 1982. The members of the  
18 board shall annually elect a chairman chair and other officers  
19 as deemed necessary. Meetings must be called by the chairman  
20 chair or at least two other members. The board shall appoint an  
21 executive director who shall serve in the unclassified civil  
22 service at the board's pleasure. The executive director may  
23 employ other staff who shall serve in the unclassified civil  
24 service. The commissioner of administration upon request of the  
25 executive director shall supply the board with necessary office  
26 space and administrative services, and the board shall reimburse  
27 the commissioner for the cost.

\*  
\*  
\*

343\*#12S

28 343.12 DUTIES OF PEACE OFFICERS.

29 Upon application of any appointed agent at large or county  
30 agent in his the agent's county of appointment, it shall be the  
31 duty of, any sheriff or his the agent's deputy or any police  
32 officer to investigate any alleged violation of the law relative  
33 to cruelty to animals, and to arrest any person found violating  
34 those laws. It shall also be the duty of those officers to take  
35 possession of any animals in their respective jurisdictions  
36 which have been cruelly treated, and deliver the same to the  
37 proper officers of the county for custody and care.

\*  
\*

343\*#21S

38 343.21 OVERWORKING OR MISTREATING ANIMALS; PENALTY.

39 Subdivision 1. TORTURE. No person shall overdrive,  
40 overload, torture, cruelly beat, neglect, or unjustifiably  
41 injure, maim, mutilate, or kill any animal, or cruelly work any  
42 animal when it is unfit for labor, whether it belongs to himself  
43 that person or to another person.

\*  
\*

44 Subd. 2. NOURISHMENT; SHELTER. No person shall  
45 deprive any animal over which he the person has charge or  
46 control of necessary food, water, or shelter.

\*

47 No change for subd 3 to 9

343\*#22S

48 343.22 INVESTIGATION OF CRUELTY COMPLAINTS.

49 Subdivision 1. REPORTING. Any person who has reason  
50 to believe that a violation of section 343.21 has taken place or  
51 is taking place may apply to any court having jurisdiction over  
52 actions alleging violation of that section for a warrant and for  
53 investigation. The court shall examine under oath the person so  
54 applying and any witnesses he the applicant produces and the  
55 court shall take his-affidavit-or their affidavits in writing.  
56 The affidavit-or affidavits must set forth facts tending to  
57 establish the grounds for believing a violation of section  
58 343.21 has occurred or is occurring, or probable cause to  
59 believe that a violation exists. If the court is satisfied of  
60 the existence of the grounds of the application, or that there  
61 is probable cause to believe a violation exists, it shall issue  
62 a signed search warrant and order for investigation to a peace  
63 officer in the county. The order shall command him the officer  
64 to proceed promptly to the location of the alleged  
65 violation, taking-with-him along with a doctor of veterinary  
66 medicine.

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67 Subd. 2. POLICE INVESTIGATION. The peace officer  
68 shall search the place designated in the warrant and, together  
69 with the veterinary doctor, shall conduct an investigation of  
70 the facts surrounding the alleged violation. The peace officer  
71 may retain in his custody, subject to the order of the court,  
72 any property or things which are specified in the warrant,

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\*

1 includin any animal if the warrant so specifies. The warrant  
 2 shall co in the names of the persons presenting affidavits in  
 3 support the application and the grounds for its issuance.  
 4 Service shall be made in accordance with the provisions of  
 5 sections 626.13, 626.14, and 626.16. The warrant must be  
 6 executed and returned to the court which issued the warrant  
 7 within ten days after its date; after the expiration of that  
 8 time the warrant, unless executed, is void. The officer  
 9 executing the warrant shall promptly return the warrant to the  
 10 court, and deliver to it a written inventory of the property or  
 11 things taken, verified by the certificate of the officer. The  
 12 warrant and order for investigation issued pursuant to this  
 13 section and section 343.23 shall have the same force as a  
 14 warrant issued pursuant to chapter 626.

15 No change for subd 3

343\*#25S

16 343.25 DOCKING HORSES; PENALTY.

17 A person who cuts the bony part of a horse's tail for the  
 18 purpose of docking it, or who causes or knowingly permits the  
 19 same to be done upon premises of which ~~he~~ the person is owner,  
 20 lessee, or user, or who assists in the cutting is guilty of a  
 21 misdemeanor. When a horse is found so cut, upon the premises or  
 22 in the custody of any person, and the wound resulting is  
 23 unhealed, that fact shall constitute prima facie evidence that  
 24 the offense was committed by ~~him~~ the person. All fines  
 25 resulting from complaint made by an officer or agent of any  
 26 society of this state for the prevention of cruelty to animals  
 27 for any offense specified in this section shall be paid to the  
 28 society whose officer or agent made the complaint.

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\*

343\*#27S

29 343.27 POISONING ANIMALS.

30 Any person who unjustifiably administers any poisonous, or  
 31 noxious drug or substance to any animal, or procures or permits  
 32 it to be done, or unjustifiably exposes that drug or substance  
 33 with intent that the drug be taken by any animal, whether the  
 34 animal is the property of ~~himself~~ the person or another, is  
 35 guilty of a gross misdemeanor.

\*

343\*#31S

36 343.31 ANIMAL FIGHTS PROHIBITED.

37 Any person who (1) promotes or engages in, or is employed  
 38 at the activity of cock-fighting, dog-fighting, or violent  
 39 pitting of one domestic animal against another of the same or a  
 40 different kind; or (2) receives money for the admission of any  
 41 person to any place used, or about to be used, for that  
 42 activity; or (3) wilfully permits any person to enter or use for  
 43 that activity premises of which ~~he~~ the permitter is the owner,  
 44 agent, or occupant; or (4) uses, trains or possesses a dog or  
 45 other animal for the purpose of participating in, engaging in or  
 46 promoting that activity is guilty of a felony. Any person who  
 47 purchases a ticket of admission or otherwise gains admission to  
 48 that activity is guilty of a misdemeanor.

\*

344\*#09S

49 344.09 PARTY ERECTING MORE THAN SHARE.

50 If there is a controversy between occupants of adjoining  
 51 lands as to their respective rights in any partition fence and  
 52 the fence viewers decide that either occupant has voluntarily  
 53 erected or otherwise become the proprietor of more than that  
 54 occupant's just share of the fence before a complaint was made,  
 55 the other occupant shall pay for the share of the fence assigned  
 56 to ~~him-or-her~~ the other to repair and maintain. The value of  
 57 the fence must be ascertained and recovered pursuant to section  
 58 344.05.

\*

345\*#01S

59 345.01 DUTY OF CONSIGNEE OR BAILEE.

60 When any personal property shall be consigned to or  
 61 deposited with any forwarding merchant, wharfinger, ~~warehouseman~~  
 62 warehouse operator, innkeeper, or storage or express company,  
 63 such consignee or bailee shall immediately cause to be entered  
 64 in a proper book kept by ~~him~~ the consignee or bailee a  
 65 description of such property, with the date of its reception;  
 66 and, if not consigned or deposited for the purpose of being  
 67 forwarded according to directions received by such consignee or  
 68 bailee at or before the reception thereof, ~~he~~ the consignee or  
 69 bailee shall immediately notify the owner by mail, if ~~his~~ the  
 70 owner's name and residence be known or can be reasonably  
 71 ascertained.

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## 345\*#03S

1 345.03 PROCEEDINGS IF PROPERTY NOT CLAIMED.  
 2 If the owner or person entitled to the property does not  
 3 take it away and pay the charges on it after notice has been  
 4 given, the person having possession of it or ~~his~~ the possessor's \*  
 5 agent shall make and deliver to the judge of any county or  
 6 municipal court, an affidavit setting forth a description of the  
 7 property, the date of its reception, the giving of the notice,  
 8 and whether the owner is known or unknown.

## 345\*#04S

9 345.04 INVENTORY; ORDER OF SALE.  
 10 Upon the delivery of the affidavit, the judge shall cause  
 11 the property to be opened and examined in ~~his~~ the judge's \*  
 12 presence and a true inventory made of it. ~~He~~ The judge shall \*  
 13 annex to the inventory an order that the property described be  
 14 sold at public auction by any constable or peace officer of the  
 15 municipality or town where it is located.

## 345\*#05S

16 345.05 NOTICE AND RETURN OF SALE.  
 17 The constable or police officer receiving the inventory and  
 18 order shall sell the property at public auction to the highest  
 19 bidder, in the manner provided by law for constables' sales  
 20 under execution, upon ten days' posted notice. When the sale is  
 21 completed, ~~he~~ the constable or police officer shall endorse upon \*  
 22 the order a return of ~~his~~ proceedings on it, and return it to \*  
 23 the clerk of court, together with the inventory and the proceeds \*  
 24 of the sale, less ~~his~~ fees. \*

## 345\*#06S

25 345.06 DISPOSITION OF PROCEEDS.  
 26 From the proceeds of the sale the clerk of court shall pay  
 27 all legal charges incurred in relation to the property or, if  
 28 the proceeds are not sufficient to pay all the charges, a  
 29 ratable proportion of each. The balance, if any, shall be paid  
 30 to the treasurer of the county where the sale took place. The  
 31 clerk shall provide the treasurer with a statement containing a  
 32 description of the property sold, the gross amount of the sale,  
 33 and the amount of costs, charges, and expenses paid to each  
 34 person. The treasurer shall file the statement in ~~his~~ the \*  
 35 treasurer's office, and make an entry of the amount received by \*  
 36 ~~him~~ and the time when received. \*

## 345\*#07S

37 345.07 MONEY DEPOSITED, HOW DISPOSED OF.  
 38 If the owner of the property sold, or ~~his~~ the owner's legal \*  
 39 representatives, at any time within five years after such money  
 40 is deposited in the county treasury, shall furnish satisfactory  
 41 evidence to the treasurer of the ownership thereof, the  
 42 treasurer shall pay to ~~him~~ the owner or representative the \*  
 43 amount so deposited. If not so claimed within the time  
 44 aforesaid, the money shall belong to the county, and be credited  
 45 to its general revenue fund.

## 345\*#09S

46 345.09 UNCLAIMED BAGGAGE; DELIVERY TO  
 47 WAREHOUSEMAN WAREHOUSE OPERATOR. \*  
 48 Personal baggage remaining in the possession of any carrier  
 49 of passengers for 30 days after having been carried to the  
 50 station of such carrier in performance of ~~his~~ the contract in \*  
 51 relation thereto, and any other property remaining in the  
 52 possession of any common carrier, at the office or station of  
 53 such carrier to which consigned, for 60 days after notice given  
 54 by mail to the consignee thereof, may be delivered by such \*  
 55 carrier, upon payment of ~~his~~ reasonable charges for the \*  
 56 transportation and storage thereof, to any licensed storage  
 57 company doing business in this state.

## 345\*#11S

58 345.11 SALE; NOTICE.  
 59 If such property is not claimed by the owner or ~~his~~ the \*  
 60 owner's agent within 12 months after its receipt by such storage \*  
 61 company, it may be sold by such company at public auction.  
 62 Before making sale three weeks' published and posted notice  
 63 thereof, describing the property and specifying the time and  
 64 place of sale, shall be given. The publication of such notice  
 65 shall also be made in a newspaper published at the county-seat  
 66 of the county where the sale is to be made, and a copy thereof  
 67 shall be mailed to the owner, if ~~his~~ the owner's address is \*  
 68 known, or, with reasonable diligence, can be ascertained.

## 345\*#13S



1 345.13 WAREHOUSEMAN'S WAREHOUSE OPERATOR'S BOND. \*

2 Before any warehouseman warehouse operator or storage \*

3 company shall be entitled to the benefit of the provisions of \*

4 this chapter, such warehouseman warehouse operator or storage \*

5 company shall give bond to the state, to be approved by the

6 governor, in the sum of \$10,000, conditioned for the faithful

7 performance of all duties enjoined upon the obligor under this

8 chapter, which bond shall be for the use of any party

9 interested, and shall be filed in the office of the clerk of the

10 district court of the county where the business of such

11 warehouseman warehouse operator is conducted. \*

345\*#15S

12 345.15 COUNTIES, UNCLAIMED PROPERTY; DISPOSITION; DUTY

13 OF SHERIFF.

14 Subdivision 1. The sheriff of any county may seize and

15 retain ~~in-his-possession~~ any personal property abandoned upon \*

16 any public way, sidewalk, or other public premises or any

17 property or exhibits entered in evidence in any judicial

18 proceeding as are released by order of the court. The sheriff

19 shall, after holding the property for a period of at least three

20 months, sell the same at public auction giving reasonable public

21 notice of the time and place of such sale in a newspaper of

22 general circulation within the county. The notice shall give a

23 brief description of the articles to be sold and the time and

24 place of sale. The sale shall be made by the sheriff or under

25 ~~his~~ the sheriff's direction. The owner of any such property \*

26 upon application and satisfactory proof of ownership may \*

27 recover ~~his~~ the property or, within one month of the sale, the

28 net proceeds of the sale of such property. The sheriff shall

29 transfer the net proceeds from the sale of property to the

30 county treasurer to be credited to the general revenue fund and

31 to be deposited as provided by law. The net proceeds shall be

32 the sale price less any costs of handling, storage, or sale.

33 Subd. 2. Repealed, 1971 c 734 s 12

345\*#31S

34 345.31 DEFINITIONS AND USE OF TERMS.

35 No change for subd 1 to 6

36 Subd. 7. "Owner" means a depositor in case of a deposit, a

37 beneficiary in case of a trust, a creditor, claimant or payee in

38 case of other choses in action, or any person having a legal or

39 equitable interest in property subject to sections 345.31 to

40 345.60 or ~~his~~ the person's legal representative. \*

41 No change for subd 8 to 9

345\*#32S

42 345.32 PROPERTY HELD BY BANKING OR FINANCIAL

43 ORGANIZATIONS OR BY BUSINESS ASSOCIATIONS.

44 The following property held or owing by a banking or

45 financial organization or by a business association is presumed

46 abandoned:

47 (a) Any demand, savings or matured time deposit made in

48 this state with a banking organization, together with any

49 interest or dividend thereon, excluding contracted service

50 charges which may be deducted for a period not to exceed one

51 year, unless the owner has, within five years:

52 (1) increased or decreased the amount of the deposit, or

53 presented the passbook or other similar evidence of the deposit

54 for the crediting of interest; or

55 (2) corresponded in writing with the banking organization

56 concerning the deposit; or

57 (3) otherwise indicated an interest in the deposit as

58 evidenced by a memorandum on file with the banking organization;

59 or

60 (4) received tax reports or regular statements of the

61 deposit by mail from the banking or financial organization

62 regarding the deposit. Receipt of the statement by the owner

63 should be presumed if the statement is mailed first class by the

64 banking or financial organization and not returned; or

65 (5) acted as provided in paragraphs (1), (2), (3) and (4)

66 of this subsection in regard to another demand, savings or time

67 deposit made with the banking or financial organization.

68 (b) Any funds or dividends deposited or paid in this state

69 toward the purchase of shares or other interest in a business

70 association where the stock certificates or other evidence of

71 interest in the business have not been issued, or in a financial

72 organization, and any interest or dividends thereon, excluding

73 contracted service charges which may be deducted for a period

1 not to exceed one year, unless the owner has within five years:  
 2 (1) increased or decreased the amount of the funds or  
 3 deposit, or presented an appropriate record for the crediting of  
 4 interest or dividends; or

5 (2) corresponded in writing with the financial organization  
 6 concerning the funds or deposit; or

7 (3) otherwise indicated an interest in the funds or deposit  
 8 as evidenced by a memorandum on file with the financial  
 9 organization; or

10 (4) received tax reports or regular statements of the  
 11 deposit or accounting by mail from the financial organization or  
 12 business association regarding the deposit. Receipt of the  
 13 statement by the owner should be presumed if the statement is  
 14 mailed first class by the financial organization or business  
 15 association and not returned.

16 (c) Any sum, excluding contracted service charges which may  
 17 be deducted for a period not to exceed one year, payable on  
 18 checks certified in this state or on written instruments issued  
 19 in this state, or issued in any other state the law in which for  
 20 any reason does not apply to the abandonment of sums payable on  
 21 checks certified in that state or written instruments issued in  
 22 that state, on which a banking or financial organization or  
 23 business association is directly liable, including, by way of  
 24 illustration but not of limitation, drafts, money orders and  
 25 traveler's checks, that has been outstanding for more than five  
 26 years from the date it was payable, or from the date of its  
 27 issuance if payable on demand, or, in the case of traveler's  
 28 checks, has been outstanding for more than 15 years from the  
 29 date of its issuance, or, in the case of money orders, has been  
 30 outstanding for more than seven years from the date of its  
 31 issuance, unless the owner has within five years, or within 15  
 32 years in the case of traveler's checks, or within seven years in  
 33 the case of money orders, corresponded in writing with the  
 34 banking or financial organization or business association  
 35 concerning it, or otherwise indicated an interest as evidenced  
 36 by a memorandum on file with the banking or financial  
 37 organization or business association.

38 (d) Any funds or other personal property, tangible or  
 39 intangible, removed from a safe deposit box or any other  
 40 safekeeping repository in this state on which the lease or  
 41 rental period has expired due to nonpayment of rental charges or  
 42 other reason, that have been unclaimed by the owner for more  
 43 than five years from the date on which the lease or rental  
 44 period expired.

45 (1) If the amount due for the use or rental of a safe  
 46 deposit box has remained unpaid for a period of six months, the  
 47 bank, savings bank, trust company, savings and loan, or safe  
 48 deposit company shall, within 60 days of the expiration of that  
 49 period, send by certified mail, addressed to the renter or  
 50 lessee of the safe deposit box, directed to the address standing  
 51 on its books, a written notice that, if the amount due for the  
 52 use or rental of the safe deposit box is not paid within 60 days  
 53 after the date of the mailing of the notice, it will cause the  
 54 safe deposit box to be opened and its contents placed in one of  
 55 its general safe deposit boxes.

56 (2) Upon the expiration of 60 days from the date of mailing  
 57 the notice, and in default of payment within the 60 days of the  
 58 amount due for the use or rental of the safe deposit box, the  
 59 bank, savings bank, trust company, savings and loan, or safe  
 60 deposit company, in the presence of its president,  
 61 vice-president, secretary, treasurer, assistant secretary,  
 62 assistant treasurer or superintendent, or such other person as  
 63 specifically designated by its board of directors, and of a  
 64 notary public not in its employ, shall cause the safe deposit  
 65 box to be opened and the contents thereof, to be removed and  
 66 sealed by the notary public in a package, in which ~~he~~ the notary  
 67 public shall enclose a detailed description of the contents of  
 68 the safe deposit box and upon which ~~he~~ the notary public shall  
 69 mark the name of the renter or lessee and, in the presence of  
 70 one of the bank officers listed above, the notary public shall  
 71 place the package in one of the bank's general safe deposit  
 72 boxes and set out the proceedings in a certificate under ~~his~~ the  
 73 notary public's official seal, which shall be delivered to the  
 74 bank, savings bank, trust company, savings and loan, or safe  
 75 deposit company.

76 (3) The bank, savings bank, trust company, savings and

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1 loan, or safe deposit company shall hold the contents of  
2 abandoned safe deposit boxes until they are claimed by the owner  
3 or the bank turns them over to the commissioner pursuant to  
4 chapter 345.

345\*#41S

5 345.41 REPORT OF ABANDONED PROPERTY.

6 (a) Every person holding funds or other property, tangible  
7 or intangible, presumed abandoned under sections 345.31 to  
8 345.60 shall report annually to the commissioner with respect to  
9 the property as hereinafter provided.

10 (b) The report shall be verified and shall include:

11 (1) except with respect to traveler's checks and money  
12 orders, the name, if known, and last known address, if any, of  
13 each person appearing from the records of the holder to be the  
14 owner of any property of the value of \$25 or more presumed  
15 abandoned under sections 345.31 to 345.60;

16 (2) in case of unclaimed funds of life insurance  
17 corporations, the full name of the policyholder, insured or  
18 annuitant and ~~his~~ that person's last known address according to \*  
19 the life insurance corporation's records;

20 (3) the nature and identifying number, if any, or  
21 description of the property and the amount appearing from the  
22 records to be due, except that items of value under \$25 each may  
23 be reported in aggregate;

24 (4) the date when the property became payable, demandable  
25 or returnable, and the date of the last transaction with the  
26 owner with respect to the property; and

27 (5) other information which the commissioner prescribes by  
28 rule as necessary for the administration of sections 345.31 to  
29 345.60.

30 (c) If the person holding property presumed abandoned is a  
31 successor to other persons who previously held the property for  
32 the owner, or if the holder has changed ~~his~~ a name while holding \*  
33 the property, ~~he~~ the holder shall file with ~~his~~ the report all \*  
34 prior known names and addresses of each holder of the property.

35 (d) The report shall be filed before November 1 of each  
36 year as of June 30 next preceding, but the report of life  
37 insurance corporations shall be filed before October 1 of each  
38 year as of December 31 next preceding. The commissioner may  
39 postpone the reporting date upon written request by any person  
40 required to file a report.

41 (e) If the holder of property presumed abandoned under  
42 sections 345.31 to 345.60 knows the whereabouts of the owner and  
43 if the owner's claim has not been barred by the statute of  
44 limitations, the holder shall, before filing the annual report,  
45 inform the owner of the steps necessary to prevent abandonment  
46 from being presumed.

47 (f) Verification, if made by a partnership, shall be  
48 executed by a partner; if made by an unincorporated association  
49 or private corporation, by an officer, and if made by a public  
50 corporation, by its chief fiscal officer.

51 (g) Holders of property described in section 345.32 shall  
52 not impose any charges against property which is described in  
53 section 345.32, clause (a), (b) or (c).

54 (h) Any person who has possession of property which ~~he~~ the \*  
55 person has reason to believe will be reportable in the future as \*  
56 unclaimed property may, with the permission of the commissioner,  
57 report and deliver such property prior to the date required for  
58 reporting in accordance with this section.

345\*#42S

59 345.42 NOTICE AND PUBLICATION OF LISTS OF ABANDONED  
60 PROPERTY.

61 Subdivision 1. On or before April 1 of each year, the  
62 commissioner shall cause notice to be published at least once  
63 but not more than twice in an English language newspaper of  
64 general circulation in the county in this state in which is  
65 located the last known address of any person to be named in the  
66 notice. If no address is listed or if the address is outside  
67 this state, the notice shall be published in the county in which  
68 the holder of the abandoned property has ~~his~~ a principal place \*  
69 of business within this state.

70 Subd. 2. The published notice shall be entitled "notice of  
71 names of persons appearing to be owners of abandoned property,"  
72 and shall contain:

73 (a) the names in alphabetical order and last known  
74 addresses, if any, of persons listed in the report and entitled

1 to notice within the county as hereinbefore specified;  
 2 (b) a statement that information concerning the amount or  
 3 description of the property and the name and address of the  
 4 holder may be obtained by any persons possessing an interest in  
 5 the property by addressing an inquiry to the commissioner; and  
 6 (c) a statement that if proof of claim is not presented by  
 7 the owner to the holder and if the owner's right to receive the  
 8 property is not established to the holder's satisfaction within  
 9 65 days from the date of the second published notice, the  
 10 abandoned property will be placed not later than 85 days after  
 11 such publication date in the custody of the commissioner to whom  
 12 all further claims must thereafter be directed.

13 The commissioner is not required to publish in such notice  
 14 any item of less than \$25 unless ~~he~~ the commissioner deems such  
 15 publication to be in the public interest. \*

16 No change for subd 3 to 4

345\*#43S

17 345.43 PAYMENT OR DELIVERY OF ABANDONED PROPERTY.

18 Subdivision 1. Every person who has filed a report under  
 19 section 345.41, within 20 days after the time specified in  
 20 section 345.42 for claiming the property from the holder, or in  
 21 the case of sums payable on traveler's checks or money orders  
 22 presumed abandoned under section 345.32 within 20 days after the  
 23 filing of the report, shall pay or deliver to the commissioner  
 24 all abandoned property specified in the report, except that, if  
 25 the owner establishes ~~his~~ a right to receive the abandoned  
 26 property to the satisfaction of the holder within the time  
 27 specified in section 345.42, or if it appears that for some  
 28 other reason the presumption of abandonment is erroneous, the  
 29 holder need not pay or deliver the property, which will no  
 30 longer be presumed abandoned, to the commissioner, but in lieu  
 31 thereof shall file a verified written explanation of the proof  
 32 of claim or of the error in the presumption of abandonment. \*

33 Subd. 2. The commissioner may ~~in-his-discretion~~ determine  
 34 that the payment of abandoned property presents a hardship for a  
 35 cooperative. ~~If-the-commissioner-determines~~ On determining that  
 36 a hardship exists, ~~he~~ the commissioner may permit the  
 37 cooperative to provide payment in equal installments over a  
 38 period of three years. \*

39 (a) If legitimate claims to property reported by the  
 40 cooperative to the commissioner exceed the installments paid,  
 41 the excess shall immediately be paid by the cooperative to the  
 42 commissioner and that amount shall be deducted from the  
 43 subsequent installments.

44 (b) This subdivision shall apply only to abandoned property  
 45 for which reports were filed within 12 months after July 1, 1977.

46 No change for subd 3

345\*#47S

47 345.47 SALE OF ABANDONED PROPERTY.

48 Subdivision 1. Except as provided in subdivisions 3 and 5,  
 49 all abandoned property other than money delivered to the  
 50 commissioner under sections 345.31 to 345.60 shall be sold by  
 51 ~~him~~ the commissioner to the highest bidder at public sale in  
 52 whatever city in the state ~~affords-in-his-judgment~~ the  
 53 commissioner judges to afford the most favorable market for the  
 54 property involved. ~~The commissioner shall hold the sale must be~~  
 55 held whenever ~~he~~ the commissioner deems necessary but at least  
 56 once every ten years. The commissioner may decline the highest  
 57 bid and reoffer the property for sale if ~~he~~ the commissioner  
 58 considers the price bid insufficient. ~~He~~ The commissioner need  
 59 not offer any property for sale if ~~in-his~~ of the opinion, that  
 60 the probable cost of sale exceeds the value of the property. \*

61 No change for subd 2 to 3

62 Subd. 3a. HOLDING PERIOD. All securities presumed  
 63 abandoned under section 345.35 and delivered to the commissioner  
 64 must be held for at least three years before ~~he-or-she-may-sell~~  
 65 them they are sold. A person making a claim under this section  
 66 is entitled to receive either the securities delivered to the  
 67 commissioner by the holder, if they still remain in the hands of  
 68 the commissioner, or the proceeds received from the sale, but no  
 69 person has any claim under this section against the state, the  
 70 holder, any transfer agent, registrar, or other person acting  
 71 for or on behalf of a holder for any appreciation in the value  
 72 of the property occurring after delivery by the holder to the  
 73 commissioner. \*

74 No change for subd 4 to 5

345\*#48S

1 345.48 DEPOSIT OF FUNDS.  
 2 Subdivision 1. All funds received under sections 345.31 to  
 3 345.60, including the proceeds from the sale of abandoned  
 4 property pursuant to section 345.47, shall forthwith be  
 5 deposited by the commissioner in the general fund of the state.  
 6 Before making the deposit ~~he~~ the commissioner shall record the  
 7 name and last known address of each person appearing from the  
 8 holders' reports to be entitled to the abandoned property and of  
 9 the name and last known address of each policyholder, insured  
 10 person, or annuitant, and with respect to each policy or  
 11 contract listed in the report of a life insurance corporation,  
 12 its number, the name of the corporation, and the amount due.  
 13 The record shall be available for public inspection at all  
 14 reasonable business hours.  
 15 Subd. 2. Repealed, 1979 c 333 s 108

345\*#50S

16 345.50 DETERMINATION OF CLAIMS.  
 17 Subdivision 1. The commissioner shall consider any claim  
 18 filed under sections 345.31 to 345.60 and may hold a hearing and  
 19 receive evidence concerning it. If a hearing is held, ~~he~~ the  
 20 commissioner shall prepare a finding and a decision in writing  
 21 on each claim filed, stating the substance of any evidence  
 22 heard ~~by him~~ and the reasons for ~~his~~ the decision. The decision  
 23 shall be a public record.  
 24 No change for subd 2

345\*#51S

25 345.51 JUDICIAL ACTION UPON DETERMINATIONS.  
 26 Any person aggrieved by a decision of the commissioner or  
 27 as to whose claim the commissioner has failed to act within 90  
 28 days after the filing of the claim, may commence an action in  
 29 the district court to establish ~~his~~ a claim. The proceeding  
 30 shall be brought within 90 days after the decision of the  
 31 commissioner or within 180 days from the filing of the claim if  
 32 the commissioner fails to act. The action shall be tried de  
 33 novo without a jury.

345\*#515S

34 345.515 AGREEMENTS TO LOCATE REPORTED PROPERTY.  
 35 It is unlawful for a person to seek or receive from another  
 36 person or contract with a person for a fee or compensation for  
 37 locating property ~~which-he-knows-has~~ knowing it to have been  
 38 reported or paid or delivered to the state treasurer pursuant to  
 39 chapter 345 prior to seven months after the date of delivery of  
 40 the property by the holder to the state treasurer as required by  
 41 section 345.43.  
 42 No agreement entered into after seven months from the date  
 43 of delivery of the property by the holder to the state treasurer  
 44 is valid if a person thereby undertakes to locate property  
 45 included in a report for a fee or other compensation exceeding  
 46 ten percent of the value of the recoverable property unless the  
 47 agreement is in writing and signed by the owner and discloses  
 48 the nature and value of the property and the name and address of  
 49 the holder thereof as such facts have been reported. Nothing in  
 50 this section shall be construed to prevent an owner from  
 51 asserting at any time that an agreement to locate property is  
 52 based upon an excessive or unjust consideration.

345\*#52S

53 345.52 ELECTION TO TAKE PAYMENT OR DELIVERY.  
 54 The commissioner, after receiving reports of property  
 55 deemed abandoned pursuant to sections 345.31 to 345.60, may  
 56 decline to receive any property reported ~~which-he-deems on~~  
 57 deeming it to have a value less than the cost of giving notice  
 58 and holding sale, or ~~he~~ the commissioner may, ~~if-he-deems on~~  
 59 deeming it desirable because of the small sum involved, postpone  
 60 taking possession until a sufficient sum accumulates. Unless  
 61 the holder of the property is notified to the contrary within  
 62 120 days after filing the report required under section 345.41,  
 63 the commissioner shall be deemed to have elected to receive the  
 64 custody of the property.

345\*#525S

65 345.525 PROPERTY HAVING NO APPARENT COMMERCIAL OR  
 66 HISTORICAL VALUE.  
 67 The commissioner may, ~~in-his-discretion,~~ withhold the  
 68 property from sales under this section. If it is determined  
 69 that property delivered to the commissioner has no commercial or  
 70 historical value ~~he~~ the commissioner may thereafter destroy or

1 otherwise dispose of the property, and in that event no action  
 2 or proceeding shall be brought or maintained against the state  
 3 or any officer thereof or against the holder for or on account  
 4 of any action taken by the commissioner pursuant to chapter 345  
 5 with respect to the property. The commissioner shall keep a  
 6 record of all items destroyed under this section, and all items  
 7 held by the historical society, including the name and address  
 8 of the owner of the property and the person who delivered the  
 9 property to ~~him~~ the commissioner, the date of delivery, a  
 10 description of the property destroyed and the date of  
 11 destruction.

345\*#53S

12 345.53 EXAMINATION OF RECORDS.

13 Subdivision 1. The commissioner may at reasonable times  
 14 and upon reasonable notice examine the records of any person if  
 15 ~~he has~~ there is reason to believe that the person has failed to  
 16 report property that should have been reported pursuant to  
 17 sections 345.31 to 345.60.

18 No change for subd 2

346\*#01S

19 346.01 WHO MAY TAKE UP.

20 No person shall take up any estray, except horses or mules,  
 21 unless such estray shall be found on lands owned or occupied by  
 22 ~~him~~ the person in the town wherein ~~he~~ the person resides.

346\*#02S

23 346.02 FINDER TO GIVE NOTICE; PENALTY.

24 ~~Every finder of an estray, within seven days thereafter,~~  
 25 ~~shall notify the owner thereof, if to him known, and request him~~  
 26 A person who finds an estray and knows who owns it shall notify  
 27 the owner within seven days after finding the estray and request  
 28 the owner to pay all reasonable charges and take such estray  
 29 away, but, if such owner be to him unknown, he. A finder who  
 30 does not know who owns the estray shall within ten days file a  
 31 notice with the town clerk. The clerk shall transmit a copy  
 32 thereof to the county recorder, who shall record the same in a  
 33 book designated "estrays book." The finder shall give posted  
 34 notice of the finding of the estray in said town. The notice  
 35 shall briefly describe the estray, giving its marks, natural and  
 36 artificial, as nearly as practicable, naming the residence of  
 37 the finder, and specifying the town, section, and time when  
 38 taken up. For failure to give such notice, the finder shall be  
 39 liable to the owner of the estray in double the amount of  
 40 damages sustained by ~~him~~ the owner thereby.

346\*#04S

41 346.04 CHARGES FOR KEEPING.

42 The person entitled to the possession of any estray, at any  
 43 time within one year after notice is filed with the town clerk,  
 44 may have it restored ~~to him~~ upon proving ~~his~~ the right to it and  
 45 paying all lawful charges that occur in relation to it. If the  
 46 person and the finder cannot agree as to the amount of the  
 47 charges, or upon what should be allowed for the use of the  
 48 estray, either party, on notice to the other, may apply to a  
 49 county or municipal court judge to settle the disagreement. The  
 50 judge may examine witnesses on oath. If any amount is owed to  
 51 the finder, over the value of the use of the estray, the money,  
 52 with costs, shall be a lien upon the estray. The costs of the  
 53 adjudication shall be allocated by the judge.

346\*#05S

54 346.05 SALE OF ESTRAY.

55 If no claimant for such estray shall cause its return to  
 56 ~~him~~ the claimant as before provided, and if such estray shall  
 57 not have been appraised at more than \$10, the finder shall  
 58 thereupon become the owner thereof; but, if such appraised value  
 59 exceeds \$10, the estray shall be sold at public auction by any  
 60 constable of the county on the request of the finder. Notice  
 61 thereof shall be given and the sale conducted and the same fees  
 62 allowed as in case of sales upon justice's execution. The  
 63 finder may bid at such sale, and at the time thereof shall  
 64 deliver to such officer a statement, in writing, of ~~his~~ the  
 65 finder's charges. After deducting such charges, if reasonable,  
 66 and the costs of sale, the officer shall deposit the remainder  
 67 of the money, together with the written statement and a  
 68 statement of the costs of sale, with the county treasurer,  
 69 taking ~~his~~ the treasurer's receipt therefor. If the finder of  
 70 any such estray shall fail to cause the sale to be made, ~~he~~ the  
 71 finder shall pay to the town the value of the estray, to be

1 recovered in an action by the town.

346\*#07S

2 346.07 REMOVAL OF ESTRAY; NEGLECT TO GIVE NOTICE.

3 If any person, without the consent of the finder, shall  
4 take away any estray taken up pursuant to this chapter, without  
5 first paying all lawful charges incurred in relation to the  
6 same, ~~he~~ the person shall be liable to the finder for the value  
7 of the estray; and, if any person taking up the estray shall  
8 neglect to comply with the provisions of this chapter, ~~he~~ that  
9 person shall be precluded from acquiring any right of property  
10 in such estray and from receiving any charges or compensation in  
11 relation thereto.

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346\*#08S

12 346.08 DISTRAINT OF ANIMALS DOING DAMAGE.

13 The owner or occupant of lands may distrain any beast doing  
14 damage thereon, either while upon the premises or upon immediate  
15 pursuit of such beast escaping therefrom, and before returning  
16 to the enclosure or immediate care of the owner or keeper, and  
17 keep such beast upon ~~his~~ the distrainer's premises, or in some  
18 public ground in ~~his~~ the distrainer's town, until ~~his~~ the  
19 damages shall be appraised, as hereinafter provided.

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346\*#09S

20 346.09 ANIMALS DOING DAMAGE.

21 Subdivision 1. NOTICE; APPRAISERS. The person  
22 distraining shall give notice to the owner of the beast, if  
23 known to ~~him~~ the distrainer, within 24 hours if ~~he~~ the owner  
24 resides in the same town, and within 48 hours if ~~he~~ the owner  
25 resides in another town in the same county, Sundays excepted.  
26 The notice shall specify the time when and the place where  
27 distrained, the number of beasts, and the place of their  
28 detention, and that at a time and place stated therein, which  
29 shall not be less than 12 hours after the service of the notice,  
30 nor more than three days after the distress, ~~he~~ the distrainer  
31 will apply to a designated county or municipal judge of the  
32 county for the appointment of appraisers to appraise the  
33 damages. If the owner is unknown or does not reside in the  
34 county, the distraining person shall apply for the appointment  
35 of appraisers within 24 hours after the distress without  
36 notice. After the application, the judge shall appoint three  
37 disinterested residents of the town to appraise the damages.

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38 No change for subd 2

346\*#11S

39 346.11 TENDER BY OWNER; EFFECT.

40 At any time before proceedings are begun for such  
41 appraisement, or before action is brought for the recovery of  
42 damages, the owner or ~~his~~ the owner's agent may tender, to the  
43 person aggrieved by the depredation of such animal, the amount  
44 of damages which such owner may believe has been sustained. If  
45 the tender be accepted, no further damages shall be recovered in  
46 any way; if refused, and the person aggrieved fails to  
47 substantiate or recover as damages a sum greater than that  
48 tendered, no costs, disbursements, or expenses shall be  
49 collected or recovered in ~~his~~ the aggrieved person's favor, but  
50 ~~he~~ the aggrieved person shall pay the costs and disbursements of  
51 such owner.

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346\*#13S

52 346.13 POUNDMASTER; CUSTODY; SALE; TIME; NOTICE.

53 The poundmaster shall receive and keep in the public pound  
54 any beasts so delivered to ~~him~~ the poundmaster; and, unless  
55 seized or discharged according to law within six days, shall  
56 sell the same or as many as shall be necessary to pay such  
57 damages, fees, and costs, at public auction, giving three days  
58 posted notice thereof, and posting one such notice on the pound.

\*

346\*#16S

59 346.16 RUNNING AT LARGE; DEFINED; PROHIBITED; TREBLE  
60 DAMAGES.

61 The herding of any animal of the species of cattle, horse,  
62 ass, mule, sheep, swine, or goat upon any land over the protest  
63 and against the will of the owner shall be deemed a running at  
64 large.

65 It shall be unlawful for any owner or any person having the  
66 control of any such animal to permit the same to run at large in  
67 the state.

68 Any person who shall knowingly permit the running at large  
69 of any such domestic animal shall be liable to the person  
70 aggrieved for treble damages sustained by ~~him~~ the aggrieved

\*

1 person, to be recovered in a civil action brought for that \*  
 2 purpose. \*

346\*#17S

3 346.17 PROCEEDS OF SALE.  
 4 From the proceeds of such sale the person making it shall \*  
 5 retain ~~his sales~~ fees ~~therefor~~, which shall be the same as are \*  
 6 allowed constables on execution sales, and the costs of keeping \*  
 7 such beasts, and ~~he~~ shall pay to the distrainer the damages so \*  
 8 certified, with fees of the appraisers and justice; and the \*  
 9 surplus, if any, shall be paid to the owner of the beasts, if  
 10 known. If no one appears at the time of the sale, or within one  
 11 week thereafter, who claims such surplus, the same shall be paid  
 12 to the treasurer of the town, to be paid to the owner of the  
 13 beasts, if claimed within one year after the distress. If not  
 14 applied for within one year, the money shall be applied to the  
 15 use of the town.

346\*#18S

16 346.18 TAKING DISTRAINED BEASTS A MISDEMEANOR.  
 17 If any person, without authority of law, and without first  
 18 paying the damages and costs, takes any distrained beast out of  
 19 the possession of the person making the distress, or that of the  
 20 sheriff, constable, or poundmaster, as the case may be, without  
 21 ~~his~~ the possessor's consent, ~~he~~ the taker shall be guilty of a \*  
 22 misdemeanor, and shall also be liable to the person injured in \*  
 23 double the amount of the damage done by such beasts. \*

346\*#19S

24 346.19 CERTAIN MALE ANIMALS OR BREACHY CATTLE.  
 25 No change for subd 1  
 26 Subd. 2. OWNER NOTIFIED; PROCEEDINGS; SALE. Upon \*  
 27 notice that any such animal is running at large, the chairman \*  
 28 chair of the town board shall forthwith notify its owner, and, \*  
 29 if ~~he~~ the owner does not immediately confine such animal, \*  
 30 the chairman chair shall cause suit to be brought against ~~him~~ \*  
 31 the owner, in the name of the town, to recover the forfeiture, \*  
 32 and the animal may be sold under execution in such action to pay \*  
 33 the forfeiture and costs.  
 34 No change for subd 3  
 35 Subd. 4. WHEN OWNER NOT FOUND. If unable to find \*  
 36 the owner of any such animal, the chairman chair shall cause it \*  
 37 to be confined in the public pound, if there be one, and, if  
 38 not, in some other enclosure, for three days; and, if not then  
 39 claimed, ~~he~~ the chair shall cause it to be sold, at public \*  
 40 auction, upon five days' posted notice. From the proceeds of \*  
 41 the sale ~~he~~ the chair shall deduct the amount of the forfeiture \*  
 42 and expenses, and deposit the balance with the town treasurer,  
 43 which shall be paid to the owner of the animal if applied for  
 44 within one year. If not so applied for, the same shall be paid  
 45 into the town treasury for the use of the town.  
 46 Subd. 5. CASTRATION; LIMITATION OF LIABILITY IN CASE OF  
 47 RAMS. If, after being notified, the owner of any such  
 48 stallion, bull, boar, or ram shall permit the same to continue  
 49 or again to run at large, such chairman chair shall forthwith \*  
 50 cause the same to be taken up and castrated in the usual manner,  
 51 and shall have a lien on such animals for the expenses of so  
 52 doing, and may also recover the amount of such expenses from the  
 53 owner of the animal in a civil action brought in the name of the  
 54 town; provided, that any such ram running at large may be  
 55 castrated without liability for damages by any person among  
 56 whose sheep he shall be found. Any chairman chair who shall \*  
 57 refuse or neglect to perform any of the duties required by this \*  
 58 section shall be guilty of a misdemeanor.

346\*#38S

59 346.38 EQUINES.  
 60 No change for subd 1 to 3  
 61 Subd. 4. SHELTER. Equines must be provided a minimum \*  
 62 of free choice protection or manmade constructed shelter from \*  
 63 direct rays of the sun when temperatures exceed 95 degrees \*  
 64 Fahrenheit, from wind, and from freezing precipitation. Natural \*  
 65 or manmade constructed shelters must be of sufficient size to \*  
 66 provide the necessary protection. Manmade Constructed shelters \*  
 67 must be structurally sound, free of injurious matter, maintained \*  
 68 in good repair, and ventilated.  
 69 Subd. 5. SPACE AND CLEANLINESS REQUIREMENTS. Manmade \*  
 70 Constructed shelters except for tie stalls must provide space \*  
 71 for the animal to roll with a minimum danger of being cast. \*  
 72 Stalls must be cleaned and kept dry to the extent the animal is



1 not required to lie or stand in fluids. Bedding must be  
2 provided in all stalls, kept reasonably clean, and periodically  
3 changed. The nature of the bedding must not pose a health  
4 hazard to the animal.

5 No change for subd 6 to 8

347\*#02S

6 347.02 KEEPING AFTER NOTICE; PENALTY.

7 Every person who shall keep or harbor a dog which has  
8 bitten any domestic animal, after having notice of such fact,  
9 shall pay a fine of \$5 for every day ~~he~~ the person keeps,  
10 harbors, or permits such dog to remain on ~~his~~ the person's  
11 premises thereafter.

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\*

347\*#03S

12 347.03 DOGS MAY BE KILLED.

13 Any owner or caretaker may kill any dog found chasing,  
14 injuring, or worrying ~~his~~ sheep or other livestock or poultry  
15 owned by or in care of such owner or caretaker, on lands or  
16 premises owned or controlled by ~~him~~ the owner or caretaker, and  
17 any owner or caretaker of sheep may kill any dog found on ~~his~~  
18 the owner's or caretaker's premises where sheep are kept, not  
19 under the human restraint or control ~~of his owner or other~~  
20 person.

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347\*#04S

21 347.04 PUBLIC NUISANCE.

22 Any dog that habitually worries, chases, or molests teams  
23 or persons traveling peaceably on the public road is a public  
24 nuisance. Upon complaint in writing to a county or municipal  
25 judge containing a description of the dog, including the name of  
26 the dog and its owner, or stating that the name or names are not  
27 known, and alleging that the dog is a public nuisance, the judge  
28 shall issue a summons, if the owner is known, commanding ~~him~~ the  
29 owner to appear before the judge at a specified time, not less  
30 than six nor more than ten days from the date of the summons, to  
31 answer the complaint. The summons shall be served not less than  
32 six days before the day of the hearing in the same manner as  
33 other county or municipal court summonses.

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347\*#06S

34 347.06 HEARING; JUDGMENT; EXECUTION.

35 The judge shall hear the evidence in the case. ~~if he finds~~  
36 Upon finding that the dog is a public nuisance, ~~he~~ the judge  
37 shall enter judgment accordingly, and shall order the constable  
38 to kill and dispose of the dog.

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347\*#07S

39 347.07 COSTS.

40 Costs in the first instance shall be paid by the  
41 complainant, but if the dog is adjudged a nuisance, and the  
42 owner is known, judgment shall be entered against ~~him~~ the owner  
43 therefor.

\*

347\*#09S

44 347.09 LICENSES.

45 In every county in which sections 347.08 to 347.21 shall  
46 become operative every dog more than six months of age must have  
47 a license. The owner of any dog (the word "owner," when used in  
48 sections 347.08 to 347.21, in relation to property in, or  
49 possession of, dogs shall include every person who owns,  
50 harbors, or keeps a dog) shall, on or before February 1 each  
51 year, obtain a license for ~~his~~ the dog, and shall pay for such  
52 license the fee prescribed by the county commissioners, which  
53 shall not be less than 50 cents nor more than \$1 for a male dog  
54 and not less than \$1 nor more than \$2 for a female dog; such  
55 payments to be made to the town, or city clerk or deputy. The  
56 application for such license shall be in such written form as  
57 prescribed by the county auditor, and shall state the name, sex,  
58 breed, age, color and marking of the dog for which the license  
59 is sought.

\*

60 The license year shall correspond to the calendar year.  
61 The sale or transfer of any licensed dog shall carry with it and  
62 transfer the license.

347\*#10S

63 347.10 OWNERS OF DOGS AND KENNELS LISTED BY ASSESSORS;  
64 LICENSES.

65 Every assessor shall annually ascertain by diligent inquiry  
66 the dogs owned, harbored, or kept within ~~his~~ the assessor's  
67 assessment district. Every person shall answer frankly and  
68 fully all questions ~~which shall be put to him~~ asked by such the  
69 assessor relative to the ownership or keeping of dogs within the

\*  
\*

1 assessor's district. The assessor shall prepare and file with  
 2 the town or statutory city clerk a list containing the names and  
 3 addresses of all owners of dogs in ~~his~~ the district, and the \*  
 4 number and sex of dogs owned, harbored or kept. ~~He~~ The assessor \*  
 5 shall make a list of the names of persons owning and operating  
 6 kennels and the number of dogs kept in each. The term "kennel"  
 7 shall mean any establishment where dogs are kept for the purpose  
 8 of breeding, sale or sporting purposes. Any person who keeps or  
 9 operates a kennel may, in lieu of the license for each dog  
 10 required by sections 347.08 to 347.21, apply to the town or city  
 11 treasurer for a kennel license for the keeping or operating of \*  
 12 such kennel. For such a kennel license ~~he~~ the person shall pay \*  
 13 a fee of \$10 for the license year. With the kennel license the  
 14 clerk shall issue a number of metal tags equal to the number of  
 15 dogs kept in the kennel. The tags shall be made in a form so  
 16 that they may be readily distinguishable from the individual  
 17 license tags for the same year. The licensee of a kennel shall  
 18 at all times keep one of such tags attached to the collar of  
 19 each dog over six months old kept ~~by him~~ under a kennel \*  
 20 license. The tags may be transferred from one dog to another  
 21 within the kennel whenever any dog is removed from the kennel.  
 22 The list shall be filed with the town or city clerk at the time  
 23 the assessor delivers to the clerk ~~his~~ the assessment roll. The \*  
 24 clerk may appoint a deputy or deputies to issue such licenses.  
 25 The clerk shall receive ten cents for each license issued, to be  
 26 paid by the town out of the revenue fund.  
 27 A license shall be issued by the clerk or ~~his~~ the clerk's \*  
 28 deputy upon application being made therefor and upon payments  
 29 made as herein provided. The license shall be in the form  
 30 prescribed by the county auditor and shall be executed by the  
 31 proper town, or city clerk or ~~his~~ deputy. The license shall \*  
 32 state the year for which it was issued, shall bear a serial  
 33 number, the owner's name and address, and the name, sex, breed,  
 34 and color of the dog licensed. When information is furnished  
 35 that any dog on the assessor's list is dead, the clerk shall so  
 36 indicate on the list.

347\*#11S

37 347.11 DOG COLLARS TO BE TAGGED.

38 Subdivision 1. METAL TAGS AND LICENSE BLANKS. The  
 39 clerk or ~~his~~ the clerk's deputy issuing a license shall at the \*  
 40 same time deliver to the licensee a metal tag, which shall bear  
 41 the same serial number as the license. The tag shall also bear  
 42 the name of the county in which issued and the license year.  
 43 The county auditor shall contract for and have prepared and  
 44 furnished, annually, a sufficient number of such metal tags, and  
 45 a sufficient supply of suitable blank licenses to be bound in  
 46 books of proper size and perforated so that a duplicate of each  
 47 license may be kept upon the stub thereof. The cost of making,  
 48 printing, and furnishing the tags and blank license receipts  
 49 shall be paid out of the dog license fund.

50 Subd. 2. DISTRIBUTION. The several county auditors  
 51 shall distribute these tags and license blanks to the several  
 52 town and city treasurers in proper amounts, together with blank  
 53 license receipts. The licensee shall securely attach the tag to  
 54 a collar and this collar, with the tag attached, shall at all  
 55 times be kept on the dog for which the license is issued. A new  
 56 tag, with a new number, shall be furnished to the licensee by  
 57 the town or city clerk, or ~~his~~ deputy, in place of the original \*  
 58 tag, upon presentation of the license and proof of the loss of  
 59 the original tag. The town clerk, or ~~his~~ deputy, shall then \*  
 60 endorse the new tag number on the license and shall enter it \*  
 61 upon the register. The clerk shall receive for ~~his~~ services \*  
 62 rendered in issuing the new tag the sum of ten cents, to be paid \*  
 63 by the person obtaining the new tag.

64 Subd. 3. DUPLICATES TO BE KEPT; ACCOUNTING. Every  
 65 town or city clerk, or ~~his~~ clerk's deputy, shall, at the time of \*  
 66 issuing a license and before delivering it, make a complete  
 67 duplicate thereof upon the stub portion of the license blank.  
 68 The clerk shall, annually, during the month of January, return  
 69 to ~~his~~ the county auditor all unused tags of the preceding year, \*  
 70 together with license books therefor and all duplicate licenses  
 71 of the preceding year, and the county auditor shall carefully  
 72 check the returned tags, duplicate licenses, and license blanks  
 73 to ascertain whether all tags and license blanks which were  
 74 furnished by the county auditor have been accounted for; and to  
 75 enable the county auditor to do that, ~~he~~ the county auditor \*

1 shall charge each town or city clerk with all tags and blank  
 2 licenses furnished or delivered to him the clerk and credit him  
 3 the clerk with those returned. In case of discrepancy, the  
 4 county auditor shall notify the county attorney, who shall  
 5 investigate and take steps to enforce the law.

347\*#12S

6 347.12 FEES PAID TO COUNTY TREASURER MONTHLY.  
 7 Every town, or city clerk, or his clerk's deputy, shall at  
 8 the end of each month pay all license fees received by-him-and  
 9 his-deputy and not before paid, to the county treasurer and, at  
 10 the same time, report, in writing, to the county auditor the  
 11 licenses issued during the month and for which the license fees  
 12 so deposited with the county treasurer were paid. The report  
 13 shall be in the form prescribed and furnished by the several  
 14 county auditors.

347\*#14S

15 347.14 UNLICENSED DOGS.  
 16 Subdivision 1. SEIZURE; IMPOUNDMENT; PRESUMPTION.  
 17 Any person may seize, impound, or restrain any unlicensed dog  
 18 which he the person may find running at large. The fact that a  
 19 dog is without a license attached to a collar shall be  
 20 presumptive evidence that the dog is unlicensed. The sheriff  
 21 and his sheriff's deputies, any marshal or constable or other  
 22 police officer shall seize, impound or restrain any dog for  
 23 which no license has been issued and for which one is required.  
 24 Any officer who shall seize, restrain, impound, or kill any dog  
 25 found in any place without a license, as required under sections  
 26 347.09 to 347.20, upon delivery of such dog or carcass and the  
 27 proper disposal of the carcass and after making a report to the  
 28 town or city treasurer of the town or city in which the dog was  
 29 seized or killed, showing that the dog did not have a license,  
 30 shall receive therefor a payment of \$2, the same to be made from  
 31 any funds in the town or city treasury not otherwise  
 32 appropriated.

33 The county auditor shall reimburse the town for any expense  
 34 incurred under section 347.10 and shall charge such expense to  
 35 the dog license fund.

36 Subd. 2. PROHIBITIONS; LIMITATIONS; REGULATIONS. It  
 37 shall be unlawful for any person to harbor or permit to remain  
 38 about his the person's premises any dog for which no license  
 39 exists and for which one is required. Any person who shall have  
 40 seized or impounded a dog with or without license under this  
 41 section shall deliver such dog to the humane officer of the town  
 42 or city, if such officer exists; or, if there be no such  
 43 officer, to the constable, statutory city marshal, or the town  
 44 or city police officer. The officer to whom the dog is  
 45 delivered shall, without delay, notify the owner, personally or  
 46 through the United States mail, if such owner be known to the  
 47 officer or can be ascertained with reasonable effort, but if the  
 48 owner be unknown or cannot be ascertained, then the officer  
 49 shall post written notice in three public places in his the  
 50 officer's town, giving a description of the dog, stating where  
 51 it is impounded and the conditions for its release. If, after  
 52 five days, the owner does not claim the dog the officer shall  
 53 dispose of the dog in a proper and humane manner.

54 No change for subd 3

347\*#16S

55 347.16 CLAIMS, HEARINGS, NOTICE.  
 56 No claim shall be allowed by the county board at less than  
 57 the amount so certified and reported, unless the claimant shall  
 58 first be notified that such action is contemplated and shall  
 59 have been given a reasonable opportunity to be heard and to  
 60 offer further evidence in support of his the claim.

347\*#17S

61 347.17 ANY PERSON MAY KILL DOGS IN CERTAIN CASES.  
 62 Any person may kill any dog that he the person knows is  
 63 affected with the disease known as hydrophobia, or that may  
 64 suddenly attack him while he the person is peacefully walking or  
 65 riding and while being out of the enclosure of its owner or  
 66 keeper, and may kill any dog found killing, wounding, or  
 67 worrying any horses, cattle, sheep, lambs, or other domestic  
 68 animals.

347\*#18S

69 347.18 TAGS; RESTRICTIONS, PROHIBITIONS.  
 70 No person, except the owner or his the owner's authorized  
 71 agent, shall remove any license tag from a dog collar or remove

1 any collar with a license attached thereto from any dog. No  
2 person shall keep or harbor a dog wearing a fictitious, altered,  
3 or invalid license tag, or a license tag not issued in  
4 connection with the licensing or keeping of the dog wearing the  
5 same. No license or license tag issued for one dog shall be  
6 transferable to another dog.

347\*#19S

7 347.19 FAILURE TO OBTAIN LICENSE.

8 Every town or city clerk shall notify the county attorney  
9 of ~~his~~ the clerk's county of every refusal or failure of an  
10 owner to obtain a license for keeping ~~his~~ a dog, and it shall be  
11 the duty of the county attorney to institute proceedings against  
12 such owner and against every owner within ~~his~~ the county who has  
13 violated any of the provisions of sections 347.08 to 347.21.

347\*#22S

14 347.22 DAMAGES, OWNER LIABLE.

15 If a dog, without provocation, attacks or injures any  
16 person who is acting peaceably ~~conducting-himself~~ in any place  
17 where ~~he~~ the person may lawfully be, the owner of the dog is  
18 liable in damages to the person so attacked or injured to the  
19 full amount of the injury sustained. The term "owner" includes  
20 any person harboring or keeping a dog but the owner shall be  
21 primarily liable. The term "dog" includes both male and female  
22 of the canine species.

347\*#37S

23 347.37 INSPECTION; ENFORCEMENT.

24 The board of animal health shall cause to be inspected from  
25 time to time all dog kennels licensed hereunder and all records  
26 required by sections 347.31 to 347.40 to be kept by the  
27 licensees.

28 Any duly authorized agent of the board, any sheriff, or ~~his~~  
29 sheriff's deputy, or police officer, or state humane agent  
30 appointed pursuant to section 343.01, is granted the power and  
31 the authority to enter upon the premises of any dog kennel at  
32 any time during the daylight hours for the purposes herein set  
33 forth, and for the purposes of inspecting the compliance with  
34 the provisions of sections 347.31 to 347.40 and the rules issued  
35 pursuant thereto, and for the purposes of enforcing sections  
36 347.31 to 347.40.

348\*#02S

37 348.02 CLAIM AND PROOF.

38 The claimant shall file with the county auditor a plat  
39 giving the government subdivision, and the position of the trees  
40 thereon. If the number of trees be increased, supplemental  
41 plats shall be filed. ~~He~~ The claimant shall show ~~his~~ ownership  
42 of the land, and make oath to the planting and maintaining of  
43 the trees, as prescribed in section 348.01; and ~~his~~ the proof  
44 shall be supported by the affidavit of at least two freeholders  
45 residing in the same town, who have personal knowledge of the  
46 facts. Such proofs shall be filed with the county auditor  
47 between July 1 and July 15, of the year for which compensation  
48 is claimed.

348\*#03S

49 348.03 DUTY OF ASSESSOR.

50 The assessor of each town, at the time of making ~~his~~ an  
51 assessment, shall ascertain if trees have been planted therein  
52 for which compensation is claimed under sections 348.01 to  
53 348.05, and, if any such be found, ~~he~~ the assessor shall  
54 personally examine the same and report the area planted and the  
55 condition of the trees to the county auditor when the assessment  
56 books are returned.

348\*#04S

57 348.04 PROOFS SENT TO COMMISSIONER OF NATURAL RESOURCES.

58 Before August 1 the county auditor shall compare the proofs  
59 furnished by the claimant with the assessor's report, and, if  
60 they correspond in substance, ~~he~~ the county auditor shall  
61 immediately forward to the commissioner of natural resources the  
62 original proofs of claim and a certified list of all plats filed.

348\*#05S

63 348.05 COMMISSIONER OF FINANCE TO ISSUE WARRANT.

64 The commissioner of finance shall audit all such claims,  
65 and, on the first Monday of October, in each year, shall issue  
66 ~~his~~ a warrant to the several claimants for the amount to which  
67 each is entitled; but, if the aggregate of compensation due to  
68 all such claimants shall exceed the appropriation therefor, ~~he~~  
69 the commissioner shall distribute the available amount amongst

1 them pro rata, which distribution shall relieve the state from  
2 further obligation to such claimants for the year.

348\*#13S

3 348.13 BOUNTIES PAID BY TOWNS, REQUIREMENTS.

4 The four feet of striped and gray gophers and woodchucks,  
5 both front feet of pocket gophers, the heads and rattles of  
6 rattlesnakes, and the bodies of birds and reptiles other than  
7 rattlesnakes shall be produced to the chairman chair of the town  
8 board of the town where they were killed, and if ~~he~~ the chair  
9 shall be satisfied that they were killed within the designated  
10 territory and by the person producing them, ~~he~~ the chair shall  
11 certify to the county auditor the number of each kind so  
12 killed. The certificate shall be issued by the chairman chair  
13 of the town board at the end of each month and shall show the  
14 names of all persons entitled to bounty for the preceding month,  
15 the number of each kind of animals, reptiles and birds so  
16 killed, and the amount of bounty that each person is entitled to  
17 receive. The county auditor shall issue thereon a warrant on  
18 the county treasurer payable to the chairman chair of the town  
19 board who issued the certificate, for the full amount of the  
20 bounty allowed by law according to the certificate, and upon  
21 receipt of the warrant the chairman chair shall pay the proper  
22 persons the bounty allowed by law for the preceding month.

23 The chairman chair to whom such feet, heads, bodies, and  
24 rattles are produced shall immediately cause such heads, feet,  
25 bodies, and rattles to be destroyed and shall cause the removal  
26 of one foot from each bird.

27 Any town board may also offer a bounty for the destruction  
28 of the animals, birds, and reptiles described in section 348.12  
29 and adopt rules for the payment thereof, which bounty so offered  
30 by a town shall be in addition to any bounty which may be  
31 offered by the board of county commissioners.

32 The town board of any town located in any county having  
33 over 45,000 and less than 49,000 inhabitants according to the  
34 1950 federal census, may by resolution require that the tail  
35 instead of the feet of striped, gray and pocket gophers and  
36 woodchucks be produced.

349\*#12S

37 349.12 DEFINITIONS.

38 No change for subd 1 to 2

39 Subd. 3. "Active member" means a member who has paid all  
40 ~~his~~ dues to the organization and has been a member of the  
41 organization for at least six months.

42 No change for subd 4 to 16

43 Subd. 17. "Distributor" is a person who sells gambling  
44 equipment ~~he~~ the distributor manufactures or purchases for  
45 resale.

349\*#151S

46 349.151 CHARITABLE GAMBLING CONTROL BOARD.

47 No change for subd 1

48 Subd. 2. MEMBERSHIP. The board consists of 13  
49 members appointed as follows:

50 (1) eleven persons appointed by the governor, at least four  
51 of whom must reside outside of the seven-county metropolitan  
52 area;

53 (2) the commissioner of public safety or ~~his~~ a designee;  
54 and

55 (3) the attorney general or ~~his~~ a designee.

56 A member serving on the board by appointment must have been  
57 a resident of Minnesota for at least five years. Of the  
58 appointees of the governor not more than six may belong to the  
59 same political party. A member appointed to the board may be  
60 removed at any time by the appointing authority. Vacancies on  
61 the board are filled in the same manner as the original  
62 appointment. Of the members appointed by the governor, three  
63 are for terms expiring June 30, 1985, four are for terms  
64 expiring June 30, 1986, and four are for terms expiring June 30,  
65 1987. After the expiration of the initial terms, appointments  
66 are for three years. The governor shall appoint the chairperson  
67 chair from among ~~his~~ the governor's appointees.

68 No change for subd 3 to 6

349\*#30S

69 349.30 DEFINITIONS.

70 No change for subd 1 to 5

71 Subd. 6. "Licensee" means any person to whom a license of  
72 any kind is issued, but does not include a common carrier

1 transporting, or a public ~~warehouseman~~ warehouse operator \*

2 storing, any gambling device for hire, or a manufacturer or

3 distributor of such devices keeping the same only for the

4 purpose of sale or distribution to others or repairing of same.

5 No change for subd 7 to 9

349\*#33S

6 349.33 PEACE OFFICERS TO OBSERVE AND INSPECT PREMISES.

7 Every sheriff, deputy sheriff, constable, marshal,

8 ~~police~~ police officer, and peace officer shall observe and \*

9 inspect the premises where occupations are carried on under

10 license and ascertain whether gambling devices are present

11 thereon and immediately report the finding thereof to the

12 authority or authorities issuing the license or licenses \*

13 applicable to the premises in question.

349\*#34S

14 349.34 PROCEEDINGS BEFORE ISSUING AUTHORITY; ORDER TO

15 SHOW CAUSE.

16 Upon the receipt of such information from any of the peace

17 officers referred to in section 349.33, if any issuing authority

18 is of the opinion that cause exists for the revocation of any

19 such license, then that authority shall issue an order to show

20 cause directed to the licensee of the premises, stating the

21 ground upon which the proceeding is based and requiring ~~him~~ the \*

22 licensee to appear and show cause at a time and place, within \*

23 the county in which the licensed premises are located, not less

24 than ten days after the date of the order, why ~~his~~ the license \*

25 should not be revoked. That order to show cause shall be served

26 upon the licensee in the manner prescribed by law for the

27 service of summons in a civil action, or by certified mail, not

28 less than eight days before the date fixed for the hearing

29 thereof. A copy of the order shall forthwith be mailed to the

30 owner of the premises, as shown by the records in the office of

31 the county recorder, at ~~his~~ the owner's last known post office \*

32 address. A copy of the order shall at the same time be mailed

33 to any other issuing authority, of which the authority issuing

34 the order to show cause has knowledge, by which other license to

35 that licensee may have been issued, and any such other authority

36 may participate in the revocation proceedings after notifying

37 the licensee and the officer or authority holding the hearing of

38 its intention so to do on or before the date of hearing, and

39 after the hearing take such action as it could have taken had it

40 instituted the revocation proceedings in the first instance.

349\*#35S

41 349.35 REVOCATION OF LICENSE.

42 Subdivision 1. REVOCATION; STAY; APPEAL. If, upon

43 the hearing of the order to show cause, it appears that the

44 licensee intentionally possessed or wilfully kept upon ~~his~~ the \*

45 licensed premises any gambling device, then the license or

46 licenses under which the licensed business is operated on the

47 licensed premises, shall be revoked. The order of revocation

48 shall not be enforced during the period allowed by section

49 349.39 for taking an appeal.

50 No change for subd 2

349\*#36S

51 349.36 DUTIES OF COUNTY ATTORNEY.

52 The county attorney of the county in which the hearing is

53 held shall attend the hearing, interrogate the witnesses, and

54 advise the issuing authority. ~~He~~ The county attorney shall also \*

55 appear for the issuing authority on any appeal taken pursuant to

56 the provisions of section 349.39.

349\*#38S

57 349.38 PROPERTY OWNERS LIABILITY.

58 When a license is revoked under the provisions of sections

59 349.30 to 349.39, the owner of the premises upon which any

60 licensed business has been operated shall not be penalized by

61 reason thereof unless it is established that ~~he~~ the owner had \*

62 knowledge of the existence of the gambling devices resulting in

63 license revocation.

349\*#39S

64 349.39 APPEAL TO DISTRICT COURT; STAY; CONTINUANCE UNDER

65 BOND; HEARING UPON ONE YEAR LIMITATION ON PREMISES.

66 Any licensee, or any owner of licensed premises, aggrieved

67 by an order of an issuing authority revoking any license may

68 appeal from that order to the district court of the county in

69 which the licensee resides by serving a notice of ~~his~~ the appeal \*

70 upon the issuing authority or the clerk thereof. The notice of

1 appeal shall state that the person appealing takes an appeal to  
2 that district court from the order revoking the license or  
3 licenses, describing them and identifying the order appealed  
4 from. This notice shall be served within 15 days from the date  
5 of service of the order appealed from, and the same, with proof  
6 of service thereof, shall be filed with the clerk of the  
7 district court of the proper county. The appeal shall stand for  
8 trial at the next term of the district court following the  
9 filing of the notice of appeal, without the service of any  
10 notice of trial, and shall be tried in the district court de  
11 novo. The trial shall be by jury if the appellant shall so  
12 demand. The licensee may continue to operate the licensed  
13 business or businesses until the final disposition of such  
14 appeal. If the district court upon the appeal shall determine  
15 that any license involved in the appeal should be revoked, it  
16 may, nevertheless, in its discretion permit the continuance of  
17 the licensed business under a bond in the amount and in the form  
18 and containing the conditions prescribed by the court. The  
19 district court on the appeal, or in a separate proceeding, may  
20 permit the issuance of a new license to a different licensee  
21 before the expiration of the period of one year specified in  
22 section 349.35, subdivision 2, upon such terms and conditions  
23 imposed by the court as will insure that no gambling device  
24 shall thereafter be maintained upon the licensed premises.

349\*#51S

25 349.51 DISTRIBUTOR AND OPERATOR LICENSES.

26 No change for subd 1

27 Subd. 2. APPLICATION; REQUIREMENTS. (a) Every  
28 application for a license must be made on a form prescribed by  
29 the department and must state the name and address of the  
30 applicant. If the applicant is a firm, partnership, or  
31 association, the application must state the name and address of  
32 each of its members. If the applicant is a corporation, the  
33 application must state the name and address of each of its  
34 officers, the date of incorporation, the address of its  
35 principle place of business, the place where the business is to  
36 be licensed and business conducted, and information concerning  
37 whether or not any officer, director, resident manager, or  
38 direct salesman salesperson of the applicant has been convicted \*  
39 of a felony or convicted for a gambling offense within the past  
40 five years. The application may contain other information the  
41 department requires for licensing purposes.

42 (b) Every applicant for a license shall be a legal resident  
43 or be incorporated within the state of Minnesota prior to the  
44 date of application for a distributor or operator license.

45 (c) Every applicant shall disclose under oath to the  
46 commissioner whether or not the applicant has any financial,  
47 legal, or other interests in a licensed wholesale liquor or  
48 alcoholic beverage distributorship or video game of chance  
49 distributorship in another state.

50 (d) No distributor may also be a wholesale distributor of  
51 liquor or alcoholic beverages.

52 (e) No distributor in this state may also be a distributor  
53 in another state, unless the distributor adequately demonstrates  
54 that he the distributor does not manufacture video games of \*  
55 chance outside of this state for use, sale, or distribution  
56 within this state.

57 No change for subd 3 to 5

349\*#52S

58 349.52 VIDEO GAME OF CHANCE LICENSES.

59 No change for subd 1 to 2

60 Subd. 3. VIDEO GAMING LICENSE ACCOUNT. There is  
61 created in the state treasury an account to be known as the  
62 "video gaming license account." All fees received by the state  
63 treasury pursuant to this section must be credited to this  
64 account. The commissioner shall, by January 10 of each year,  
65 certify to the state treasurer the number of video games of  
66 chance located in each city, and in each county outside of  
67 incorporated areas, on December 31 of the previous year. Within  
68 ten days of receiving this certification the state treasurer  
69 shall pay from the video gaming license account to each city and  
70 county \$30 for each video game of chance located in the city or  
71 in the county outside city limits. After making these payments  
72 he the state treasurer shall transfer the unexpended balance in \*  
73 the account to the general fund.

74 No change for subd 4

349\*#53S

1 349.53 RECORD-KEEPING DUTIES OF DISTRIBUTORS.

2 A distributor shall keep at each licensed place of business  
3 complete and accurate records for that place of business,  
4 including invoices of video games of chance held, purchased,  
5 manufactured, brought in or caused to be brought in from outside  
6 the state, or shipped or transported to operators in this state,  
7 and of all sales of video games of chance made. The distributor  
8 must also keep adequate records of the names, addresses, and  
9 license numbers of operators to whom video games of chance are  
10 sold. All books, records, and other papers and documents  
11 required by this section to be kept must be preserved for a  
12 period of at least one year after the date of the documents, or  
13 the date of their entries as they appear in the records, unless  
14 the department, in writing, authorizes their destruction or  
15 disposal at an earlier date. At any time during usual business  
16 hours, the commissioner or ~~his~~ designated representatives may \*  
17 enter any place of business of a distributor without a search  
18 warrant and inspect the premises and the records required to be  
19 kept under this section, to determine whether or not all the  
20 provisions of this chapter are being fully complied with. If  
21 the commissioner or any representative is denied free access or  
22 is hindered or interfered with in making an examination, the  
23 license of the distributor at the premises is subject to  
24 revocation.

349\*#54S

25 349.54 ACCESS TO GAMES.

26 The commissioner and ~~his~~ designated representatives must be \*  
27 given access to all video games of chance, whether the games are  
28 in the possession of distributors, operators, or owners, upon  
29 reasonable notice.

349\*#56S

30 349.56 LOCATION AGREEMENTS.

31 An operator is required to have a location agreement with  
32 the owner where the game is placed for use by the public. The  
33 location agreement must show that the game is to be placed only  
34 in locations permitted by law. The location agreements,  
35 together with the other records of the operator, must be  
36 accessible to the commissioner and ~~his~~ designated \*  
37 representatives. The operator is required to certify under oath  
38 to the department annually the name and address of the location  
39 in which each game has been placed and that the games have been  
40 placed only in locations permitted by law. Placing a game in an  
41 illegal location is grounds for suspension or revocation of the  
42 operator's license.

349\*#59S

43 349.59 CONTRABAND.

44 Subdivision 1. PACKAGES DECLARED TO BE CONTRABAND.

45 The following are declared to be contraband:

46 (1) all video games of chance which do not have a licensing  
47 stamp affixed to them and all containers that contain contraband  
48 video games of chance;

49 (2) all video games of chance to which the commissioner or \*  
50 ~~his~~ designated representatives have been denied access for the  
51 inspection of contents. In lieu of seizure, the commissioner or \*  
52 ~~his~~ designated representatives may seal the game to prevent its  
53 use until inspection of contents is permitted;

54 (3) all video games of chance at a location at which there  
55 is no location agreement in force; and

56 (4) all video games of chance illegally brought into the  
57 state.

58 Subd. 2. SEIZURE. Contraband may be seized by the \*  
59 commissioner or ~~his~~ designated representatives or by any sheriff  
60 or other police officer, with or without process, and is subject  
61 to forfeiture as provided in subdivision 3.

62 Subd. 3. DISPOSITION OF SEIZED PROPERTY. The person  
63 who has seized the property must follow the procedure set forth  
64 under section 297A.15, subdivision 4. Whenever the commissioner  
65 is satisfied that any person from whom property is seized under  
66 this section acting in good faith and without intent to evade  
67 the tax imposed by those sections, he the commissioner shall \*  
68 release the property seized without further legal proceedings.

351\*#02S

69 351.02 VACANCIES.

70 Every office shall become vacant on the happening of either  
71 of the following events, before the expiration of the term of



1 such office:

- 2 (1) The death of the incumbent;
- 3 (2) ~~His~~ The incumbent's resignation; \*
- 4 (3) ~~His~~ The incumbent's removal; \*
- 5 (4) ~~His~~ The incumbent's ceasing to be an inhabitant of the \*
- 6 state, or, if the office is local, of the district, county or \*
- 7 city for which ~~he~~ the incumbent was elected or appointed, or \*
- 8 within which the duties of ~~his~~ the office are required to be \*
- 9 discharged;
- 10 (5) ~~His~~ The incumbent's conviction of any infamous crime, \*
- 11 or of any offense involving a violation of ~~his~~ the official oath; \*
- 12 (6) ~~His~~ The incumbent's refusal or neglect to take the oath \*
- 13 of office, or to give or renew ~~his~~ the official bond, or to \*
- 14 deposit or file such oath or bond within the time prescribed; \*
- 15 (7) The decision of a competent tribunal declaring ~~his~~ the \*
- 16 incumbent's election or appointment void; \*
- 17 (8) The death of the person elected or appointed to fill a \*
- 18 vacancy, or for a full term, before ~~he~~ the person qualifies, or \*
- 19 before the time when by law ~~he~~ the person should enter upon the \*
- 20 duties of the office ~~to which he was elected or appointed~~, in \*
- 21 which case the vacancy shall be deemed to take place at the time \*
- 22 when ~~his~~ the term of office would have begun had ~~he~~ the person \*
- 23 lived.

351\*#03S

24 351.03 REMOVAL BY GOVERNOR.

25 The governor may remove from office any clerk of the  
 26 appellate courts or a district court, judge of probate, judge of  
 27 any municipal court, court commissioner, sheriff, constable,  
 28 coroner, auditor, county recorder, county attorney, county  
 29 commissioner, county treasurer, or any collector, receiver, or  
 30 custodian of public moneys, when it appears to ~~him~~ the governor \*

31 by competent evidence, that the officer has been guilty of  
 32 malfeasance or nonfeasance in the performance of ~~his~~ official \*

33 duties. Prior to removal, ~~he~~ the governor shall give to the \*

34 officer a copy of the charges ~~against him~~ and an opportunity to \*

35 be heard in ~~his~~ defense against the charges. \*

351\*#04S

36 351.04 SPECIAL COMMISSIONER TO TAKE TESTIMONY.

37 When charges are made against any such officer, the  
 38 governor shall appoint a special commissioner to take and report  
 39 the testimony for and against ~~him~~ the officer to be used on the \*

40 hearing. ~~Each witness shall subscribe his name to his testimony~~ \*

41 ~~When the same testimony~~ is reduced to writing, it must be signed \*

42 by the witness who gave it. \*

351\*#05S

43 351.05 VACANCY DURING RECESS OF LEGISLATURE.

44 When a vacancy occurs during the recess of the legislature,  
 45 in any office which the legislature, or the governor by and with  
 46 the advice and consent of the senate, or of both branches of the  
 47 legislature, is authorized to fill by appointment, unless  
 48 otherwise specially provided, the governor may appoint some  
 49 suitable person to perform the duties of such office for the  
 50 time being. The person so appointed, before proceeding to  
 51 execute ~~his~~ the duties, shall qualify in the manner required by \*

52 law of the officer in whose place ~~he~~ the person is appointed and \*

53 hold office until the vacancy is regularly filled, as provided  
 54 by law.

351\*#06S

55 351.06 APPOINTMENT; CONTINUANCE OF TERM; IMPEACHMENT.

56 Unless otherwise provided for, when a vacancy in an  
 57 elective office is authorized to be filled by appointment, such  
 58 appointment shall continue until the next general election  
 59 occurring after there is sufficient time to give the notice  
 60 prescribed by law, and until a successor is elected and has  
 61 qualified. When any state officer, excepting the lieutenant  
 62 governor, shall be temporarily suspended from the performance of  
 63 the duties of ~~his~~ office by reason of ~~his~~ having been impeached, \*

64 the governor shall appoint some suitable person to exercise the  
 65 duties of such office during the time of such suspension, and  
 66 such person, before entering upon ~~his~~ the duties, shall comply \*

67 with the requirements of law relating to the same, and  
 68 during ~~his~~ incumbency shall be governed in the administration \*

69 thereof by all laws enacted in reference thereto, and receive  
 70 the compensation provided by law for such office.

351\*#07S

71 351.07 HABITUAL DRUNKENNESS.

1 The habitual drunkenness of any person holding office under  
 2 the constitution or laws of this state shall be good cause for  
 3 ~~his~~ removal from office by the authority and in the manner \*  
 4 provided by law.

351\*#08S

5 351.08 SUSPENSION OF COUNTY TREASURER; TREASURER AD  
 6 INTERIM.

7 When it shall appear from the report of the state auditor  
 8 that any county treasurer has been guilty of malfeasance or  
 9 non-feasance in the performance of ~~his~~ official duties, the \*  
 10 governor may suspend such treasurer from office, if ~~he~~ the \*  
 11 governor shall deem the public interest so requires. Upon such \*  
 12 suspension, the governor shall immediately notify the county  
 13 auditor, who shall notify the county board of such suspension,  
 14 and call a meeting thereof, to be held at the earliest possible  
 15 date and within five days from the date of notice. The board  
 16 shall meet at the time specified and appoint a treasurer ad  
 17 interim, who shall qualify according to law, whereupon the  
 18 suspended treasurer shall deliver to the treasurer ad interim  
 19 all the public property, money, books, accounts, papers, and  
 20 documents in ~~his~~ the suspended treasurer's possession. \*

351\*#09S

21 351.09 CHARGES; COMMISSIONER; WITNESSES.

22 The suspended county treasurer may ~~notify~~ ask the governor \*  
 23 ~~that he desires for~~ a hearing upon the charges made ~~against him~~, \*  
 24 whereupon the governor shall cause the same to be reduced to  
 25 writing, and a copy thereof to be furnished to such treasurer.  
 26 ~~He~~ The governor shall appoint a special commissioner to take and \*  
 27 report the testimony for and against such officer. The  
 28 commissioner shall notify the treasurer of the time and place  
 29 when and where ~~he will take~~ such testimony will be taken, and \*  
 30 shall also notify the county attorney, who shall appear for the  
 31 county upon the examination.

351\*#10S

32 351.10 HEARING; DECISION; DEMAND, WHEN MADE.

33 The governor shall fix the time and place of hearing on the  
 34 report, and give the county treasurer notice thereof. If, upon  
 35 hearing, the charges are sustained, the governor shall ~~make his~~ \*  
 36 order ~~removing~~ the treasurer removed from office absolutely, and \*  
 37 the treasurer ad interim shall continue to discharge the duties  
 38 of treasurer until ~~his~~ a successor is elected and has qualified; \*  
 39 but if, upon the hearing, the charges are not sustained, the  
 40 treasurer shall be restored to office. If the suspended  
 41 treasurer shall not, within 30 days after the date of the order  
 42 of suspension, demand a hearing, such neglect shall create a  
 43 vacancy in the office, and the treasurer ad interim shall  
 44 continue in office as in case of a removal.

351\*#11S

45 351.11 FEES OF COMMISSIONERS AND WITNESSES; HOW PAID.

46 The fees of the special commissioners provided for in this  
 47 chapter shall be the same allowed by law to referees, and  
 48 witnesses giving testimony for the prosecution before such  
 49 commissioner shall be allowed the same fees as witnesses in the  
 50 district court. In case of removal by the governor of state  
 51 officers, such fees shall be paid by the state on the order of  
 52 the governor. On ~~presentation of~~ receiving the order ~~to~~, \*  
 53 the commissioner of finance, ~~he~~ shall draw ~~his~~ a warrant upon the \*  
 54 state treasurer in favor of the person entitled to the same;  
 55 but, when testimony is taken for or against a county officer,  
 56 the fees of the commissioner and witnesses for the prosecution  
 57 shall be paid by the county, upon allowance by the county board,  
 58 in the same manner as other claims against the county. In such  
 59 proceedings against a county officer, when testimony is taken by  
 60 a shorthand reporter, ~~his~~ the fees paid to the reporter shall be \*  
 61 the same as allowed district court reporters for like services,  
 62 and the county board shall provide for its payment; but, if such  
 63 services are performed by the commissioner, ~~he~~ the commissioner \*  
 64 shall be paid only reporter's fees. In such case the county  
 65 board, in its discretion, may allow to counsel compensation not  
 66 exceeding \$10 per day for the time actually engaged before the  
 67 commissioner.

352\*#01S

68 352.01 DEFINITIONS.

69 No change for subd 1 to 2A

70 Subd. 2B. EXCLUDED EMPLOYEES. The following persons  
 71 are excluded from the meaning of state employee:

- 1 (1) elective state officers;
- 2 (2) students employed by the University of Minnesota, the  
3 state universities, and community colleges unless approved for  
4 coverage by the board of regents, the state university board or  
5 the state board for community colleges, as the case may be;
- 6 (3) employees who are eligible to membership in the state  
7 teachers retirement association except employees of the  
8 department of education who have elected or may elect to be  
9 covered by the Minnesota state retirement system instead of the  
10 teachers retirement association;
- 11 (4) employees of the University of Minnesota who are  
12 excluded from coverage by action of the board of regents;
- 13 (5) officers and enlisted ~~men~~ personnel in the national \*  
14 guard and the naval militia and such as are assigned to  
15 permanent peacetime duty who pursuant to federal law are or are  
16 required to be members of a federal retirement system;
- 17 (6) election officers;
- 18 (7) persons engaged in public work for the state but  
19 employed by contractors when the performance of the contract is  
20 authorized by the legislature or other competent authority;
- 21 (8) officers and employees of the senate and house of  
22 representatives or a legislative committee or commission who are  
23 temporarily employed;
- 24 (9) all courts and court employees, referees, receivers,  
25 jurors, and notaries public, except employees of the appellate  
26 courts and referees and adjusters employed by the department of  
27 labor and industry;
- 28 (10) patient and inmate help in state charitable, penal and  
29 correctional institutions including the Minnesota veterans home;
- 30 (11) persons employed for professional services where the  
31 service is incidental to regular professional duties and whose  
32 compensation is paid on a per diem basis;
- 33 (12) employees of the Sibley House Association;
- 34 (13) employees of the Grand Army of the Republic and  
35 employees of the ladies of the G.A.R.;
- 36 (14) operators and drivers employed pursuant to section  
37 16.07, subdivision 4;
- 38 (15) the members of any state board or commission who serve  
39 the state intermittently and are paid on a per diem basis; the  
40 secretary, secretary-treasurer, and treasurer of those boards if  
41 their compensation is \$500 or less per year, or, if they are  
42 legally prohibited from serving more than two consecutive terms  
43 and their total service therefor is required by law to be less  
44 than ten years; and the board of managers of the state  
45 agricultural society and its treasurer unless ~~he~~ the treasurer \*  
46 is also its full time secretary;
- 47 (16) state troopers;
- 48 (17) temporary employees of the Minnesota state fair  
49 employed on or after July 1 for a period not to extend beyond  
50 October 15 of the same year; and persons employed at any time or  
51 times by the state fair administration for special events held  
52 on the fairgrounds;
- 53 (18) emergency employees in the classified service except  
54 emergency employees who within the same pay period become  
55 provisional or probationary employees on other than a temporary  
56 basis, shall be deemed "state employees" retroactively to the  
57 beginning of the pay period;
- 58 (19) persons described in section 352B.01, subdivision 2,  
59 clauses (b) and (c) formerly defined as state police officers;
- 60 (20) all temporary employees in the classified service, all  
61 temporary employees in the unclassified service appointed for a  
62 definite period of not more than six months and employed less  
63 than six months in any one-year period and all seasonal help in  
64 the classified service employed by the department of revenue;
- 65 (21) trainees paid under budget classification number 41,  
66 and other trainee employees, except those listed in subdivision  
67 2A, clause (10);
- 68 (22) persons whose compensation is paid on a fee basis;
- 69 (23) state employees who in any year have credit for 12  
70 months service as teachers in the public schools of the state  
71 and as teachers are members of the teachers retirement  
72 association or a retirement system in St. Paul, Minneapolis, or  
73 Duluth;
- 74 (24) employees of the adjutant general employed on an  
75 unlimited intermittent or temporary basis in the classified and  
76 unclassified service for the support of army and air national

- 1 guard training facilities;
- 2 (25) chaplains and nuns who have taken a vow of poverty as
- 3 members of a religious order;
- 4 (26) labor service employees employed as a laborer 1 on an
- 5 hourly basis;
- 6 (27) examination monitors employed by departments,
- 7 agencies, commissions, and boards for the purpose of conducting
- 8 examinations required by law;
- 9 (28) members of appeal tribunals, exclusive of the chairman \*
- 10 chair, to which reference is made in section 268.10, subdivision \*
- 11 4;
- 12 (29) persons appointed to serve as members of fact finding
- 13 commissions, adjustment panels, arbitrators, or labor referees
- 14 under the provisions of chapter 179;
- 15 (30) temporary employees employed for limited periods of
- 16 time under any state or federal program for the purpose of
- 17 training or rehabilitation including persons employed for
- 18 limited periods of time from areas of economic distress except
- 19 skilled and supervisory personnel and persons having civil
- 20 service status covered by the system;
- 21 (31) full-time students employed by the Minnesota
- 22 historical society who are employed intermittently during part
- 23 of the year and full time during the summer months;
- 24 (32) temporary employees, appointed for not more than six
- 25 months, of the metropolitan council and of any of its statutory
- 26 boards, the members of which board are appointed by the
- 27 metropolitan council;
- 28 (33) persons employed in positions designated by the
- 29 department of employee relations as student workers;
- 30 (34) any person who is 65 years of age or older when
- 31 appointed and who does not have allowable service credit for
- 32 previous employment, unless the employee gives notice to the
- 33 director within 60 days following his appointment that he \*
- 34 desires coverage is desired; \*
- 35 (35) tradesmen members of trades employed by the \*
- 36 metropolitan waste control commission with trade union pension
- 37 plan coverage pursuant to a collective bargaining agreement
- 38 first employed after June 1, 1977; and
- 39 (36) persons employed in subsidized on-the-job training,
- 40 work experience or public service employment as enrollees under
- 41 the federal comprehensive employment and training act from and
- 42 after March 30, 1978, unless the person has as of the later of
- 43 March 30, 1978 or the date of employment sufficient service
- 44 credit in the retirement system to meet the minimum vesting
- 45 requirements for a deferred annuity, or the employer agrees in
- 46 writing on forms prescribed by the director to make the required
- 47 employer contributions, including any employer additional
- 48 contributions, on account of that person from revenue sources
- 49 other than funds provided under the federal comprehensive
- 50 employment and training act, or the person agrees in writing on
- 51 forms prescribed by the director to make the required employer
- 52 contribution in addition to the required employee contribution.
- 53 No change for subd 3
- 54 Subd. 4. ACCUMULATED CONTRIBUTIONS. "Accumulated
- 55 contributions" means the total, exclusive of interest, of (a)
- 56 the sums deducted from the salary of an employee, (b) the amount
- 57 of payments, including assessments, paid by him the employee in \*
- 58 lieu of such salary deductions and all other payments made under
- 59 Laws 1929, Chapter 191, or any amendment thereof, and credited
- 60 to his the employee's individual account in the retirement fund. \*
- 61 No change for subd 5 to 7
- 62 Subd. 11. ALLOWABLE SERVICE. "Allowable service"
- 63 means:
- 64 (1) Any service rendered by an employee for which on or
- 65 before July 1, 1957, he the employee was entitled to allowable \*
- 66 service credit on the records of the system by reason of
- 67 employee contributions in the form of salary deductions,
- 68 payments in lieu of salary deductions, or in any other manner
- 69 authorized by Minnesota Statutes 1953, chapter 352, as amended
- 70 by Laws 1955, chapter 239;
- 71 (2) Any service rendered by an employee for which on or
- 72 before July 1, 1961, he the employee elected to obtain credit \*
- 73 for service by making payments to the fund pursuant to Minnesota
- 74 Statutes 1961, section 352.24;
- 75 (3) Except as provided in clauses (9) and (10), any service
- 76 rendered by an employee after July 1, 1957, for any calendar

1 month in which ~~he~~ the employee is paid salary from which \*  
2 deductions are made, deposited and credited in the fund,  
3 including deductions made, deposited and credited as provided in  
4 section 352.041;

5 (4) Except as provided in clauses (9) and (10), any service  
6 rendered by an employee after July 1, 1957 for any calendar  
7 month for which payments in lieu of salary deductions are made,  
8 deposited and credited in the fund, as provided in section  
9 352.27 and Minnesota Statutes 1957, section 352.021, subdivision  
10 4.

11 For purposes of clauses (3) and (4), except as provided in  
12 clauses (9) and (10), any salary paid for a fractional part of  
13 any calendar month is deemed the compensation for the entire  
14 calendar month;

15 (5) The period of absence from their duties by employees  
16 who by reason of injuries incurred in the performance thereof  
17 are temporarily disabled and for which disability the state is  
18 liable under the workers' compensation law until the date  
19 authorized by the director for the commencement of payments of a  
20 total and permanent disability benefit from the retirement fund;

21 (6) The unused portion of an employee's annual leave \*  
22 allowance for which ~~he~~ the employee is paid salary;

23 (7) Any service covered by a refund repaid as provided in  
24 section 352.23 or 352D.05, subdivision 4, but does not include  
25 service rendered as an employee of the adjutant general for  
26 which the person has credit with the federal civil service  
27 retirement system;

28 (8) Any service prior to July 1, 1978 by an employee of the  
29 transit operating division of the metropolitan transit  
30 commission or by an employee on an authorized leave of absence  
31 from the transit operating division of the metropolitan transit  
32 commission who is employed by the labor organization which is  
33 the exclusive bargaining agent representing employees of the  
34 transit operating division which was credited by the  
35 metropolitan transit commission-transit operating division  
36 employees retirement fund or any of its predecessor plans or  
37 funds as past, intermediate, future, continuous or allowable  
38 service as defined in the metropolitan transit  
39 commission-transit operating division employees retirement fund  
40 plan document in effect on December 31, 1977;

41 (9) Any service rendered after July 1, 1983, by an employee  
42 who is employed on a part-time basis for less than 50 percent of  
43 full time, for which the employee is paid salary from which  
44 deductions are made, deposited and credited in the fund,  
45 including deductions made, deposited and credited as provided in  
46 section 352.041 or for which payments in lieu of salary  
47 deductions are made, deposited and credited in the fund as  
48 provided in section 352.27 shall be credited on a fractional  
49 basis either by pay period, monthly, or annually based upon the  
50 relationship that the percentage of salary earned bears to a  
51 full-time salary, with any salary paid for the fractional  
52 service credited on the basis of the rate of salary applicable  
53 for a full-time pay period, month, or a full-time year. For  
54 periods of part-time service which is duplicated service credit,  
55 the provisions of section 356.30, subdivision 1, clauses (i) and  
56 (j), shall govern;

57 (10) Any service by an employee in the Minnesota  
58 demonstration job-sharing program pursuant to sections 43.56 to  
59 43.62 which is less than 40 hours per week or 2,080 hours per  
60 year and for which the employee is paid salary from which  
61 deductions are made, deposited and credited in the fund, shall  
62 be credited on a fractional basis either weekly or annually  
63 based upon the relationship that the number of hours of service  
64 bears to either 40 hours per week or 2,080 hours per year, with  
65 any salary paid for the fractional service credited on the basis  
66 of the rate of salary applicable for a full-time week or a  
67 full-time year.

68 The allowable service determined and credited on a  
69 fractional basis pursuant to clauses (9) and (10) shall be used  
70 in calculating the amount of benefits payable, but service as  
71 determined on a fractional basis shall not be used in  
72 determining the length of service required for eligibility for  
73 benefits;

74 (11) Any period of authorized leave of absence without pay  
75 which does not exceed one year and for which the employee  
76 obtained credit by payment to the fund made in lieu of salary

1 deductions. To obtain credit, the employee shall pay an amount  
 2 equal to the employee and employer contribution rate provided in  
 3 section 352.04, subdivisions 2 and 3, multiplied by the  
 4 employee's hourly rate of salary on the date of return from  
 5 leave of absence and by the days and months of the leave of  
 6 absence without pay for which the employee desires to obtain  
 7 allowable service credit. The employing department, at its  
 8 option, may pay the employer amount on behalf of its employees.  
 9 Payments made under this clause shall include interest at the  
 10 rate of six percent per annum from the date of termination of  
 11 the leave of absence to the date payment is made unless payment  
 12 is completed within one year of the return from leave of absence.

13 No change for subd 12 to 18

14 Subd. 19. RETIREMENT. "Retirement" means the time  
 15 after a state employee is entitled to an accrued annuity, as  
 16 defined in subdivision 21, payable ~~to him~~ pursuant to his an \*  
 17 application for annuity filed in the office of the system as  
 18 provided in section 352.115, subdivision 8 or, in the case of an \*  
 19 employee who has received a disability benefit, when he that \*  
 20 employee attains age 65. \*

21 No change for subd 20

22 Subd. 21. ACCRUED ANNUITIES. For the purposes of  
 23 this chapter and chapters 3A, 352B, 352C and 490 "accrued  
 24 annuity" means an annuity which had become payable to a retired \*  
 25 employee in his the lifetime of the employee. An annuity or \*  
 26 benefit authorized as provided in this chapter and chapters 3A,  
 27 352B, 352C and 490 becomes payable on the first day of each  
 28 calendar month for that calendar month and is to be paid on the  
 29 first day of each calendar month beginning with benefits payable  
 30 on and after December 1, 1977.

31 Notwithstanding any provision to the contrary in this  
 32 chapter and chapters 3A, 352B, 352C and 490, benefit payment  
 33 authorized as "payable for life" shall be payable for the entire  
 34 month in which death occurs and the benefit payment for the  
 35 month of death shall be payable to the surviving spouse or other  
 36 beneficiary only if the annuitant dies before negotiating the  
 37 check.

38 No change for subd 22 to 23

352\*#021S

39 352.021 MINNESOTA STATE RETIREMENT SYSTEM.

40 No change for subd 1 to 2

41 Subd. 3. OPTIONAL EXEMPTIONS. Any person who is  
 42 appointed by the governor or lieutenant governor may request  
 43 exemption from coverage under this chapter if he the appointee \*  
 44 is not so covered at the date of such appointment. To qualify \*  
 45 for this exemption ~~he shall make his~~ request must be made within \*  
 46 90 days from the date of entering upon the duties of the \*  
 47 position to which appointed. He A person requesting exemption \*  
 48 shall not thereafter be entitled to such coverage so long as he \*  
 49 continues employed in the position which entitled him that \*  
 50 person to exemption therefrom. \*

51 Subd. 4. MS 1957 Repealed, Ex1959 c 6 s 34

52 Subd. 4. RE-ENTERING SERVICE AFTER REFUNDMENT.

53 Whenever a former employee who has withdrawn his accumulated \*  
 54 contributions re-enters employment entitling him in a position \*  
 55 entitled to coverage under the state retirement system \*  
 56 established by this chapter, he the employee shall be covered \*  
 57 thereby on the same basis as a new employee and shall not be  
 58 entitled to credit for any former service, nor shall the annuity  
 59 rights forfeited at the time of taking a refundment be restored,  
 60 except as provided in this chapter.

61 No change for subd 5

352\*#028S

62 352.028 COVERAGE TERMINATION.

63 Coverage of any person under the system shall terminate  
 64 upon his that person's ceasing to be a state employee. \*

352\*#03S

65 352.03 BOARD OF DIRECTORS, COMPOSITION, EXECUTIVE  
 66 DIRECTOR; DUTIES, POWERS.

67 No change for subd 1 to 2

68 Subd. 4. DUTIES AND POWERS OF BOARD OF DIRECTORS. It  
 69 is the duty of the board and it has power to:

70 (1) Elect a chairman chair; \*

71 (2) Appoint an executive director;

72 (3) Establish rules and regulations for the administration  
 73 of the provisions of chapters 3A, 352, 352B, 352C, 352D and 490

1 and transaction of the business of the system, all subject to  
2 the limitation of said chapter and the law;

3 (4) Consider and dispose of, or take such other action as  
4 the board of directors deems appropriate concerning denials of  
5 applications for annuities or disability benefits under this  
6 chapter, and complaints of employees and others pertaining to  
7 the retirement of employees and the operation of the system;

8 (5) Advise the director on any matters relating to the  
9 system and the carrying out of the functions and purposes of  
10 said chapter, which advice shall be controlling; and

11 The director and assistant director shall be in the  
12 unclassified service but appointees may be selected from civil  
13 service lists if it is desired to do so. The salary of the  
14 executive director shall be as provided by section 15A.081,  
15 subdivision 1. The salary of the assistant director shall be  
16 set in accordance with section 43A.18, subdivision 3.

17 No change for subd 4a

18 Subd. 5. EXECUTIVE DIRECTOR. The executive  
19 director, hereinafter called the director, of the system shall  
20 be appointed by the board on the basis of fitness, experience in  
21 the retirement field, and leadership ability. ~~He~~ The director  
22 shall have had at least five years' experience on the  
23 administrative staff of a major retirement system. \*

24 Subd. 6. DUTIES AND POWERS OF EXECUTIVE DIRECTOR.  
25 The management of the system is vested in the director who shall  
26 be the executive and administrative head of the system. ~~He~~ The  
27 director shall act as advisor to the board on all matters  
28 pertaining to the system; ~~He, and~~ shall also act as the  
29 secretary of the board. ~~It is the duty of~~ The director and he  
30 has the power to shall: \*

31 (1) Attend all meetings of the board;  
32 (2) Prepare and recommend to the board rules and  
33 regulations for the purpose of carrying out the provisions of  
34 this chapter;

35 (3) Establish and maintain an adequate system of records  
36 and accounts following recognized accounting principles and  
37 controls;

38 (4) Designate an assistant director with the approval of  
39 the board;

40 (5) Appoint such employees, both permanent and temporary,  
41 as are necessary to carry out the provisions of said chapter;

42 (6) Organize the work of the system as ~~he~~ the director  
43 deems necessary to fulfill the functions of the system, and ~~to~~  
44 define the duties of its employees and delegate to them any ~~of~~  
45 ~~his~~ his powers or duties, subject to ~~his~~ the control of the director  
46 and under such conditions as ~~he~~ the director may prescribe. \*  
47 Appointments to exercise delegated power shall be by written  
48 order filed with the secretary of state; \*

49 (7) With the advice and consent of the board, contract for  
50 actuarial services, professional management services, and  
51 consulting services as may be necessary and fix the compensation  
52 therefor. The contracts shall not be subject to the competitive  
53 bidding procedure prescribed by chapter 16. Professional  
54 management services may not be contracted for more often than  
55 once in every six years. Copies of all professional management  
56 survey reports shall be sent directly to the legislature and the  
57 legislative auditor at the same time reports are furnished the  
58 board. Only management firms experienced in conducting  
59 management surveys of federal, state or local public retirement  
60 systems shall be qualified to contract with the director  
61 hereunder;

62 (8) With the advice and consent of the board provide  
63 inservice training for all employees of the system;

64 (9) Make refundments of accumulated contributions to former  
65 state employees and to the designated beneficiary, surviving  
66 spouse, legal representative or next of kin of deceased state  
67 employees or deceased former state employees, all as provided in  
68 this chapter;

69 (10) Determine the amount of the annuities and disability  
70 benefits of employees covered by the system and authorize  
71 payment thereof beginning as of the dates the annuities and  
72 benefits begin to accrue, all in accordance with the provisions  
73 of said chapter;

74 (11) Pay annuities, refundments, survivor benefits,  
75 salaries and all necessary operating expenses of the system;

76 (12) Certify funds available for investment to the state

1 board of investment;  
 2 (13) With the advice and approval of the board request the  
 3 state board of investment to sell securities when ~~he~~ the \*  
 4 director determines that funds are needed for the purposes of \*  
 5 the system;

6 (14) Prepare and submit to the board and the legislature an  
 7 annual report covering the operation of the system, as required  
 8 by sections 356.215 to 356.23;

9 (15) Prepare and submit biennial and quarterly budgets to  
 10 the board and with the approval of the board submit the budgets  
 11 to the department of administration; and

12 (16) With the approval of the board, perform such other  
 13 duties as may be required for the administration of the  
 14 retirement and other provisions of this chapter and for the  
 15 transaction of its business.

16 No change for subd 7.

17 Subd. 8. MEDICAL ADVISOR. The state commissioner of  
 18 health or such other licensed physician on the staff of the  
 19 ~~state commissioner of health~~ as ~~he~~ the commissioner may \*  
 20 designate shall be the medical advisor of the director. \*

21 Subd. 9. DUTIES OF THE MEDICAL ADVISOR. The medical  
 22 advisor shall designate licensed physicians to examine  
 23 applicants for disability benefits. The medical advisor shall  
 24 pass upon all medical reports based upon such examinations  
 25 required to determine whether a state employee is totally and  
 26 permanently disabled as defined in section 352.01, subdivision  
 27 17, ~~and~~ shall investigate all health and medical statements and \*  
 28 certificates by or on behalf of a state employee in connection \*  
 29 with a disability benefit, and shall report in writing to the \*  
 30 director ~~his~~ conclusions and recommendations on all matters \*  
 31 referred ~~to him~~ for advice. \*

32 No change for subd 10 to 16

352\*#04S

33 352.04 STATE EMPLOYEES RETIREMENT FUND, CONTRIBUTIONS BY  
 34 EMPLOYEE AND EMPLOYER.

35 No change for subd 1 to 3

36 Subd. 4. PAYROLL DEDUCTIONS. The head of each  
 37 department shall cause employee contributions to be deducted  
 38 from the salary of each employee covered by the system on every  
 39 payroll abstract and shall approve one voucher payable to the  
 40 state treasurer for the aggregate amount so deducted on the  
 41 payroll abstract. Deductions from salaries of employees paid  
 42 direct by any department, institution, or agency of the state  
 43 shall be made by the officer or employee authorized by law to  
 44 pay such salaries. The head of any department or agency having  
 45 authority to appoint any employee who receives fees as ~~his~~ \*  
 46 compensation or who receives ~~his~~ compensation on federal \*  
 47 payrolls shall collect as the required employee contribution the  
 48 applicable amounts required in subdivision 2. All such  
 49 deductions from salary and amounts collected shall be remitted \*  
 50 ~~by him~~ to the director with a statement showing the amount of \*  
 51 earnings or fees, and in the case of fees, the number of  
 52 transactions, and the amount of each of such deductions and  
 53 collections and the names of the employees on whose account the  
 54 same have been made.

55 Subd. 5. PAYMENT OF EMPLOYER CONTRIBUTIONS. The head  
 56 of each department or agency shall cause employer contributions  
 57 to be made to the fund on each payroll abstract at the time each  
 58 employee is paid ~~his~~ salary in the amounts required by \*  
 59 subdivision 3. These contributions shall be charged as  
 60 administrative costs. Each department shall pay these amounts  
 61 from such accounts and funds from which each department or  
 62 agency receives its revenue, including appropriations from the  
 63 general fund and from any other fund, now or hereafter existing,  
 64 for the payment of salaries and in the same proportion as it  
 65 pays therefrom the amounts of such salaries.

66 No change for subd 6 to 12

352\*#041S

67 352.041 LEAVE OF ABSENCE FOR EMPLOYMENT BY POLITICAL  
 68 SUBDIVISION.

69 Subdivision 1. ALLOWABLE SERVICE CREDIT. Any  
 70 employee covered by the system who is given a leave of absence  
 71 for employment by a political subdivision of the state shall  
 72 continue to pay into the state employees retirement fund for the  
 73 period of such leave, and upon such payment ~~he~~ shall be given \*  
 74 allowable service credit as a state employee on the records of



1 the system the same as though ~~he~~ the employee had received \*  
 2 salary from the state therefor. Such payments into the  
 3 retirement fund shall be at the rate required in section 352.04,  
 4 subdivision 2, and shall be based upon the salary received from  
 5 the political subdivision subject to the maximum amount, if any.

6 No change for subd 2 to 5

352\*#05S

7 352.05 STATE TREASURER TO BE TREASURER OF SYSTEM.

8 The state treasurer shall be exofficio treasurer of the  
 9 retirement funds of the system and ~~his~~ the general bond to the \*  
 10 state shall cover all liability for ~~his~~ actions as treasurer of \*  
 11 these funds. All moneys of the system received by ~~him~~ the \*  
 12 treasurer shall be set aside in the state treasury to the credit \*  
 13 of the proper fund. ~~He~~ The treasurer shall deliver to the \*  
 14 director each month copies of all payroll abstracts of the state  
 15 together with the commissioner of finance's warrants covering  
 16 the deductions made on these payroll abstracts for the  
 17 retirement fund; whereupon the director shall cause to be made,  
 18 in quadruplicate, a list of the commissioner of finance's  
 19 warrants and these warrants shall then be deposited with the  
 20 state treasurer to be credited to the retirement fund. ~~He~~ The \*  
 21 treasurer shall pay out of this fund only on warrants issued by \*  
 22 the commissioner of finance, upon abstracts signed by the  
 23 director, or by the finance officer designated by the director  
 24 during the disability or the absence of the director from the  
 25 city of St. Paul, Minnesota. Abstracts for investments may be  
 26 signed by the secretary of the state board of investment.

352\*#061S

27 352.061 INVESTMENT BOARD TO INVEST FUNDS.

28 The director shall, from time to time, certify to the state  
 29 board of investment such portions of the state employees  
 30 retirement fund as in ~~his~~ the judgment of the director may not \*  
 31 be required for immediate use. Assets from the state employees  
 32 retirement fund shall be transferred to the Minnesota  
 33 post-retirement investment fund as provided in section 11A.18.  
 34 The state board of investment shall thereupon invest and  
 35 reinvest sums so transferred, or certified, in such securities  
 36 as are duly authorized legal investments for such purposes under  
 37 section 11A.24.

352\*#113S

38 352.113 PERMANENT DISABILITY BENEFITS.

39 No change for subd 1 to 3

40 Subd. 4. MEDICAL EXAMINATIONS; AUTHORIZATION FOR  
 41 PAYMENT OF BENEFIT. An applicant shall provide medical  
 42 evidence to support an application for total and permanent  
 43 disability. The director shall have the employee examined by at  
 44 least one additional licensed physician designated by the  
 45 medical advisor. The physicians shall make written reports to  
 46 the director concerning the employee's disability including  
 47 medical opinions as to whether ~~he~~ the employee is permanently \*  
 48 and totally disabled within the meaning of section 352.01,  
 49 subdivision 17. The director shall also obtain written  
 50 certification from the employer stating whether the employee is  
 51 on sick leave of absence because of a disability which will  
 52 prevent further service to the employer and as a consequence the  
 53 employee is not entitled to compensation from the employer. If  
 54 upon the consideration of the reports of the physicians and such  
 55 other evidence as may have been supplied by the employee or  
 56 others interested therein, the medical advisor finds the  
 57 employee totally and permanently disabled, ~~he~~ the advisor shall \*  
 58 make appropriate recommendation to the director in writing  
 59 together with the date from which the employee has been totally  
 60 disabled, and the director shall thereupon determine the  
 61 propriety of authorizing payment of a disability benefit as  
 62 provided in this section. The employee must be on approved  
 63 leave of absence from the employer to be eligible to make  
 64 application for a total and permanent disability benefit, but  
 65 the fact that an employee is placed on leave of absence without  
 66 compensation because of disability shall not bar ~~him~~ that \*  
 67 employee from receiving a disability benefit. Unless payment of \*  
 68 a disability benefit has terminated because the employee is no  
 69 longer totally disabled, or because ~~he~~ the employee has reached \*  
 70 age 65 as provided in this section, the disability benefit shall  
 71 cease with the last payment received by the disabled employee or  
 72 which had accrued ~~to him in his~~ during the lifetime of the \*  
 73 employee unless he leaves there is a spouse surviving him; in \*

1 that event the surviving spouse shall be entitled to the  
2 disability benefit for the calendar month in which the disabled  
3 employee died.

4 Subd. 5. Repealed, lSpl985 c 7 s 36

5 Subd. 6. REGULAR MEDICAL EXAMINATIONS. At least once  
6 each year during the first five years following the allowance of  
7 a disability benefit to any employee, and at least once in every  
8 three-year period thereafter, the director may require any  
9 disabled employee to undergo a medical examination to be made at  
10 the place of residence of such employee, or at any place  
11 mutually agreed upon, by a physician or physicians designated by  
12 the medical advisor and engaged by the director. If any  
13 examination indicates to the medical advisor that ~~he~~ the  
14 employee is no longer permanently and totally disabled, or ~~that~~  
15 ~~he is engaged in~~ or is able to engage in a gainful occupation,  
16 payments of the disability benefit by the fund shall be  
17 discontinued. The payments shall discontinue as soon as ~~he~~ the  
18 employee is reinstated to the payroll following sick leave, but  
19 in no case shall payment be made for more than 60 days after the  
20 medical advisor finds that such employee is no longer  
21 permanently and totally disabled.

\*  
\*  
\*  
\*  
\*

22 Subd. 7. PARTIAL RE-EMPLOYMENT. Should the disabled  
23 employee resume a gainful occupation ~~and-his~~ from which earnings  
24 are less than ~~his~~ the employee's salary at the date of  
25 disability or the salary currently paid for similar positions,  
26 the director shall continue the disability benefit in an amount  
27 which when added to such earnings does not exceed ~~his~~ the salary  
28 at the date of disability or the salary currently paid for  
29 similar positions, whichever is lower, provided the disability  
30 benefit in such case does not exceed the disability benefit  
31 originally allowed. No deductions for the retirement fund shall  
32 be taken from the salary of a disabled employee who is receiving  
33 a disability benefit as provided in this subdivision.

\*  
\*  
\*

34 No change for subd 8

35 Subd. 9. RETURN TO STATE SERVICE. Any employee  
36 receiving a disability benefit who is restored to active state  
37 service except employees receiving benefits as provided in  
38 subdivision 7, shall have deductions taken for the retirement  
39 fund and upon subsequent retirement have ~~his~~ the payable  
40 retirement annuity based upon all allowable service including  
41 that upon which the disability benefits were based. No employee  
42 shall be entitled to receive disability benefits and a  
43 retirement annuity at the same time.

\*

44 Subd. 10. EMPLOYEE AGAIN DISABLED AFTER RESUMING  
45 EMPLOYMENT. If a disabled employee resumes gainful  
46 employment with the state and ~~he~~ is not entitled to continued  
47 payment of a disability benefit as provided in subdivision 7,  
48 ~~his~~ the right to a disability benefit shall terminate when ~~he~~  
49 the employee has been employed for one year thereafter. Should  
50 such employee again become totally and permanently disabled  
51 before reaching age 65, ~~he-may-again-make~~ application for a  
52 disability benefit may again be made. In the event the employee  
53 is entitled to a disability benefit it shall be computed as  
54 provided in subdivision 9.

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55 Subd. 11. RECOMPUTATION OF BENEFIT. If an employee  
56 who has resumed employment as provided in subdivision 10 is  
57 re-employed for more than three months, but is unable to  
58 continue in such re-employment for one year, ~~his~~ the disability  
59 benefit shall be recomputed allowing ~~him~~ additional service  
60 credit for the period of re-employment; provided that if the  
61 period of re-employment does not exceed three months, the  
62 deductions taken from ~~his~~ salary after resuming employment shall  
63 be returned to ~~him~~ the employee, ~~and-he~~ who shall not be  
64 entitled to service credit for the period covered by the  
65 returned deductions.

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66 No change for subd 12

352\*#115S

67 352.115 RETIREMENT ANNUITY.

68 No change for subd 1

69 Subd. 2. AVERAGE SALARY. The retirement annuity  
70 hereunder payable at age 65 or thereafter shall be computed in  
71 accordance with the applicable provisions of the formula stated  
72 in subdivision 3 hereof, on the basis of the employee's average  
73 salary for the period of ~~his~~ allowable service. Such retirement  
74 annuity is known as the "normal" retirement annuity.

\*

75 For each year of allowable service, "average salary" of an

1 employee for the purpose of determining ~~his~~ a retirement annuity \*  
 2 means the average of the highest five successive years of salary \*  
 3 upon which ~~he~~ the employee has made contributions to the \*  
 4 retirement fund by payroll deductions.

5 "Average salary" shall not include the payment of accrued  
 6 unused annual leave or overtime paid at time of final separation  
 7 from state service if paid in a lump sum nor shall it include  
 8 the reduced salary, if any, paid during the period the employee  
 9 is entitled to benefit payments from the workers' compensation  
 10 court of appeals for temporary disability.

11 No change for subd 3

12 Subd. 7. APPLICATION FOR ANNUITY. Application for  
 13 annuity may be made by the employee, or someone acting in ~~his~~ \*  
 14 behalf of the employee, upon proof of authority satisfactory to \*  
 15 the director.

16 Subd. 8. ACCRUAL OF ANNUITY. State employees shall  
 17 make application for an annuity but such application shall not  
 18 be made more than 60 days prior to the time the employee is  
 19 eligible to retire by reason of both age and service  
 20 requirements. If the director determines an applicant for  
 21 annuity has fulfilled all the requirements of the law to entitle \*  
 22 ~~him~~ the applicant to an annuity, ~~he~~ the director shall authorize \*  
 23 payment thereof in accordance with the provisions of this chapter \*  
 24 and payment shall be made pursuant to this authorization. An \*  
 25 annuity shall begin to accrue no earlier than 60 days prior to \*  
 26 the date the application is filed with the director, but in no \*  
 27 event prior to the day following the termination of state \*  
 28 service or prior to the day the employee is eligible to retire \*  
 29 by reason of both age and service requirements. The retirement \*  
 30 annuity shall cease with the last payment which had accrued to \*  
 31 ~~the retired-employee~~ during ~~his~~ the lifetime of the retired \*  
 32 employee unless ~~he-elected~~ an optional annuity provided in \*  
 33 section 352.116, subdivision 3, had been selected and ~~he~~ had \*  
 34 become ~~entitled-to-payment-thereof~~ payable. The joint and last \*  
 35 survivor annuity shall cease with the last payment received by \*  
 36 the survivor ~~in-his-or-her~~ during the lifetime of the survivor. \*  
 37 If a retired employee had not selected an optional annuity, or a \*  
 38 survivor annuity is not payable under the option, and a spouse \*  
 39 survives, such spouse shall be entitled only to the annuity for \*  
 40 the calendar month in which the retired employee died. If an \*  
 41 optional annuity is payable after the death of the retired \*  
 42 employee, the survivor shall be entitled to the annuity for the \*  
 43 calendar month in which the retired employee died.

44 No change for subd 9 to 11

45 Subd. 12. DEATH, RETURN OF WARRANTS. If at the time  
 46 of death a retired employee, a disabled employee or a survivor \*  
 47 has in ~~his~~ possession commissioner of finance's warrants \*  
 48 covering a retirement annuity, disability benefit or survivor \*  
 49 benefit from the retirement fund, in the absence of probate \*  
 50 proceedings, and upon the return of such warrants for \*  
 51 cancellation, payment of such accrued annuity or benefit shall \*  
 52 be paid as provided in subdivision 11, or 352.12, subdivision \*  
 53 4. Payments made under the provisions of this subdivision shall \*  
 54 be a bar to recovery by any other person or persons.

55 Subd. 13. Repealed, 1981 c 224 s 276

352\*#12S

56 352.12 REFUND AFTER DEATH OF EMPLOYEE OR FORMER EMPLOYEE.

57 Subdivision 1. DEATH BEFORE TERMINATION OF SERVICE.

58 If an employee dies before ~~his~~ state service has terminated and \*  
 59 neither a survivor annuity nor a reversionary annuity is payable \*  
 60 or if a former employee who has sufficient service credit to be \*  
 61 entitled to an annuity dies before the benefit has become \*  
 62 payable, the director shall make a refundment to ~~his~~ the last \*  
 63 designated beneficiary or, if there be none, to ~~his~~ the \*  
 64 surviving spouse or, if none, to the employee's surviving \*  
 65 children in equal shares or, if none, to the employee's \*  
 66 surviving parents in equal shares or, if none, to the \*  
 67 representative of ~~his~~ the estate in an amount equal to ~~his~~ the \*  
 68 accumulated employee contributions plus interest thereon to the \*  
 69 date of death at the rate of five percent per annum compounded \*  
 70 annually. In the event an employee dies who has received a \*  
 71 refundment which ~~he-had~~ was subsequently repaid in full, \*  
 72 interest shall be paid on such repaid refundment only from the \*  
 73 date of repayment. If the repayment was made in installments, \*  
 74 interest shall be paid only from the date installment payments \*  
 75 began. The designated beneficiary, surviving spouse or

1 representative of the estate of an employee who had received a  
2 disability benefit shall not be entitled to interest upon any  
3 balance remaining to ~~his~~ the decedent's credit in the fund at \*  
4 the time of death.

5 Subd. 2. SURVIVING SPOUSE BENEFIT. If an employee or  
6 former employee who has attained the age of at least 55 years  
7 and has credit for not less than ten years allowable service or  
8 who has credit for not less than 30 years of allowable service,  
9 regardless of age attained, dies before an annuity or disability  
10 benefit has become payable, notwithstanding any designation of  
11 beneficiary to the contrary, ~~his-or-her~~ the surviving spouse of \*  
12 the employee may elect to receive, in lieu of the refund with \*  
13 interest provided in subdivision 1, an annuity equal to the  
14 joint and 100 percent survivor annuity which the employee could \*  
15 have qualified for had ~~he-or-she~~ the employee terminated service \*  
16 on the date of death. The annuity shall be computed as provided  
17 in section 352.115, subdivisions 1, 2, and 3, and section  
18 352.116, subdivisions 1 and 3. The annuity shall cease with the  
19 last payment received by the surviving spouse in ~~his-or-her~~ the \*  
20 lifetime of the surviving spouse. An amount equal to the \*  
21 excess, if any, of the accumulated contributions which were  
22 credited to the account of the deceased employee over and above  
23 the total of the benefits paid and payable to the surviving  
24 spouse shall be paid to the deceased employee's last designated  
25 beneficiary or, if none, to the surviving children of the  
26 deceased spouse in equal shares or, if none, to the surviving  
27 parents of the deceased spouse or, if none, to the  
28 representative of the estate of such deceased spouse. Any  
29 employee may request in writing that this subdivision not apply  
30 and that payment be made only to ~~his~~ a designated beneficiary as \*  
31 otherwise provided by this chapter.

32 No change for subd 3

33 Subd. 4. REFUND TO MINOR BENEFICIARY. If an employee \*  
34 or former employee dies having named as ~~his~~ a beneficiary a \*  
35 person who is a minor at the time of the application for refund,  
36 and the amount of the refund does not exceed \$1,500, exclusive  
37 of interest, the director in the absence of guardianship or  
38 probate proceedings may make payment to the natural guardian  
39 having custody of such minor beneficiary, for the benefit of  
40 such child. Any annuity, retirement allowance or disability  
41 benefit which had accrued at the time of death of a disabled or  
42 retired employee, payable to a minor beneficiary, may similarly  
43 be paid, and such payment shall be a bar to recovery by any  
44 other person or persons.

45 Subd. 5. MONTHLY INSTALLMENTS. The beneficiary or  
46 surviving spouse of any deceased employee or former employee  
47 entitled to receive a refundment shall have the option of having  
48 the amount due ~~him~~ paid in monthly installments in such amounts \*  
49 as may be agreed upon with the director.

50 Subd. 6. DEATH AFTER SERVICE TERMINATION. Except as  
51 provided in subdivision 1, if a former employee covered by the  
52 system dies and ~~he~~ has not received an annuity, a retirement \*  
53 allowance or a disability benefit, a refundment shall be made to \*  
54 ~~his~~ the last designated beneficiary or, if there be none, to ~~his~~ \*  
55 the surviving spouse or, if none, to the employee's surviving \*  
56 children in equal shares or, if none, to the employee's \*  
57 surviving parents in equal shares or, if none, to the  
58 representative of ~~his~~ the estate in an amount equal to ~~his~~ \*  
59 accumulated employee contributions. \*

60 Subd. 7. ABSENCE OF OPTIONAL OR REVERSIONARY ANNUITY.  
61 If a retired employee dies who selected neither an optional \*  
62 annuity or a reversionary annuity, there shall be paid to ~~his~~ \*  
63 the designated beneficiary or, if there be none, to ~~his~~ the \*  
64 surviving spouse or, if none, to the employee's surviving  
65 children in equal shares or, if none, to the employee's  
66 surviving parents in equal shares or, if none, to the  
67 representative of ~~his~~ the estate, an amount equal to the excess, \*  
68 if any, of the accumulated contributions to the credit of the \*  
69 retired employee immediately prior to ~~his~~ retirement over and \*  
70 above the aggregate of (1) all annuities, retirement allowances \*  
71 and disability benefits ~~he~~ which had been received and which had \*  
72 accrued in ~~his~~ the lifetime of the decedent, and (2) the \*  
73 annuity, retirement allowance or disability benefit if \*  
74 applicable, payable to ~~his~~ the surviving spouse under section \*  
75 352.115, subdivision 8, or section 352.113, subdivision 4, for \*  
76 the calendar month in which the retired employee died.

1 Subd. 8. MS 1961, repealed, 1963 c 383 s 59

2 Subd. 8. OPTIC OR REVERSIONARY ANNUITY. If the  
3 last eligible recipient of an optional annuity dies and the  
4 total amounts paid thereunder are less than the accumulated  
5 contributions to the credit of the retired employee immediately  
6 prior to his retirement, the balance of such accumulated \*  
7 contributions shall be paid to the person designated by the  
8 retired employee in writing to receive the same, but if no such  
9 designation has been made by the retired employee the remaining  
10 balance of such accumulated contributions shall be paid to the  
11 surviving children of the deceased recipient of the optional  
12 annuity in equal shares or, if none, to the deceased recipient's  
13 parents or, if none, to the representative of the deceased  
14 recipient's estate.

15 Subd. 9. BENEFICIARY DESIGNATION. The designation  
16 of a beneficiary or person to receive any accumulated  
17 contributions remaining to the credit of an employee, a former \*  
18 employee, or a retired employee, at the time of his death, as  
19 provided in this section, must be in writing and must be filed  
20 with the director prior to the death of the employee, former  
21 employee, or retired employee.

22 Subd. 10. DEATH OF BENEFICIARY BEFORE REFUND. If the  
23 last designated beneficiary or beneficiaries and the surviving  
24 spouse of a (a) deceased employee, (b) former employee, or (c)  
25 retired employee, should die before receiving a refund of the  
26 sum to the credit of the deceased employee, former employee or \*  
27 retired employee at the time of his death, the refund shall be  
28 made to the estate of the deceased employee or as provided in  
29 subdivision 3 if the amount of the refund does not exceed \$1,500  
30 exclusive of interest.

31 Subd. 11. DEATH OF DISABILITY ANNUITANT. If an  
32 employee who has received a disability benefit dies, there shall  
33 be paid to his the last designated beneficiary or, if there be \*  
34 none, to his the surviving spouse, or if none, to the employee's \*  
35 surviving children in equal shares or, if none, to the  
36 employee's surviving parents in equal shares or, if none, to the \*  
37 representative of his the estate, an amount equal to the excess,  
38 if any, of the accumulated contributions to the credit of the \*  
39 employee at the time the disability benefit began to accrue over  
40 and above the aggregate of (1) all disability benefits he had \*  
41 received and which had accrued ~~in his lifetime~~ during life, and \*  
42 (2) the benefit for the month in which the disabled employee  
43 died, payable, if applicable, to his the surviving spouse under \*  
44 section 352.113, subdivision 4.

45 Subd. 12. REFUNDMENT, FAILURE TO REQUEST. If the  
46 last designated beneficiary, surviving spouse, legal  
47 representative or next of kin, as determined by the director  
48 with the concurrence of the board, fails to make claim for  
49 refundment as provided in this section (a) within five years  
50 from the date of death of a retired employee or disabled  
51 employee, or (b) within five years after the last deduction was  
52 taken from the salary of a deceased employee or deceased former  
53 employee, the accumulated contributions of such deceased  
54 employee, former employee, retired employee or disabled employee  
55 shall be credited to the retirement fund; however, if claim to  
56 refundment is made within ten years after the transfer of  
57 accumulated contributions to the fund or within ten years after  
58 the date of death, whichever is later, and the amount  
59 transferred to the fund is over \$25, the sum shall be restored  
60 to the account of such deceased employee, former employee,  
61 retired employee, or disabled employee and refundment shall then  
62 be made to the surviving spouse or, if none, to the legal  
63 representative of his the estate irrespective of any designation \*  
64 of beneficiary made by the deceased employee, former employee,  
65 retired employee or disabled employee.

66 Subd. 13. REFUNDMENT, BENEFICIARY. If at the time \*  
67 of death a former employee has in his possession a commissioner  
68 of finance's warrant which does not exceed \$500 covering a \*  
69 refundment of his accumulated contributions in the retirement  
70 fund, in the absence of probate proceedings such commissioner of  
71 finance's warrant may be returned for cancellation, and then  
72 upon application made by the last designated beneficiary of such  
73 deceased former employee, refundment of the accumulated  
74 contributions shall be made to the last designated beneficiary.  
75 Payments made under the provisions of this subdivision shall be  
76 a bar to recovery by any other person or persons.

352\*#15S

1 352.15 EXEMPTION FROM PROCESS AND TAXATION.  
 2 Subdivision 1. None of the moneys, annuities, or other  
 3 benefits mentioned herein shall be assignable either in law or  
 4 in equity or be subject to any state estate tax, or to  
 5 execution, levy, attachment, garnishment, or other legal  
 6 process, except as provided in section 518.611. Provided,  
 7 however, the executive director may pay an annuity, benefit or  
 8 refund to a banking institution, qualified under chapter 48,  
 9 that is trustee for a person eligible to receive such annuity,  
 10 benefit or refund. Upon the request of a retired, disabled or  
 11 former employee, the executive director may mail the annuity,  
 12 benefit or refund check to a banking institution, savings  
 13 association or credit union for deposit to such employee's  
 14 account or joint account with ~~his~~ a spouse. The board of \*  
 15 directors may prescribe the conditions under which such payments  
 16 will be made.

17 Subd. 2. Upon certification to the director by the  
 18 commissioner of finance or the regents of the university of  
 19 Minnesota or the head of any other department or agency  
 20 responsible for the processing of its payrolls, the director  
 21 shall release part or all of any moneys held for an employee in  
 22 a retirement fund to correct a salary overpayment to an employee  
 23 who has been erroneously paid. Provided however that the  
 24 director shall not release such moneys until such time as the  
 25 former employee or person otherwise entitled thereto would be  
 26 eligible to apply for a refund and has been given proper  
 27 notice. Amounts paid under the provisions of this subdivision  
 28 shall be the equivalent of a refund. If an employee or survivor  
 29 is entitled to an immediate or deferred annuity or survivor \*  
 30 benefit, no funds shall be paid from ~~his~~ a retirement account  
 31 under this provision. The director shall prescribe the form and  
 32 manner of certification.

352\*#22S

33 352.22 REFUND OR DEFERRED ANNUITIES.

34 No change for subd 1

35 Subd. 2. AMOUNT OF REFUNDMENT. Except as provided in  
 36 subdivision 3, any person who ceased to be a state employee  
 37 after June 30, 1973, by reason of termination of state service  
 38 shall receive a refundment in an amount equal to ~~his~~ employee \*  
 39 accumulated contributions plus interest at the rate of five  
 40 percent per annum compounded annually. Such interest shall be  
 41 computed to the first day of the month in which the refund is  
 42 processed and shall be based on fiscal year balances.

43 No change for subd 2a

44 Subd. 3. DEFERRED ANNUITY. (1) Any employee with at  
 45 least ten years of allowable service when such termination  
 46 occurs may ~~at-his-option~~ elect to leave ~~his~~ the accumulated \*  
 47 contributions in the fund and thereby be entitled to a deferred  
 48 retirement annuity. This annuity shall be computed in the  
 49 manner provided by the law in effect at the time state service  
 50 terminated, on the basis of allowable service prior to  
 51 termination of service.

52 (2) An employee on layoff or on leave of absence without  
 53 pay, except a leave of absence for health reasons, who does not  
 54 return to state service shall have any annuity, deferred annuity  
 55 or other benefit to which ~~he~~ the employee may become entitled \*  
 56 computed under the law in effect on ~~his~~ the last working day. \*

57 (3) No application for a deferred annuity shall be made  
 58 more than 60 days prior to the time the former employee reaches  
 59 the required age ~~to-entitle-him~~ for entitlement to the payment \*  
 60 of the annuity. The deferred annuity shall begin to accrue no  
 61 earlier than 60 days prior to the date the application is filed  
 62 in the office of the system, but in no event prior to the date  
 63 the employee reaches the required age ~~to-entitle-him~~ for \*  
 64 entitlement to the annuity nor prior to the day following the \*  
 65 termination of state service in a position not covered by the  
 66 retirement system nor prior to the day following the termination  
 67 of employment in a position which requires the employee to be a  
 68 member of either the public employees retirement association or  
 69 the teachers retirement association.

70 (4) Application for the accumulated contributions left on  
 71 deposit with the fund may be made at any time after 30 days  
 72 following the date of termination of service.

73 Subd. 4. Repealed, 1983 c 128 s 36

74 No change for subd 5

1 Subd. 8. REFUND SPECIFICALLY LIMITED. If a former  
 2 employee covered by the system does not apply for refund within  
 3 five years after the last deduction was taken from ~~his~~ salary \*  
 4 for the retirement fund, and ~~he~~ does not have sufficient service \*  
 5 to qualify for a deferred annuity such accumulated contributions  
 6 shall be credited to and become a part of the retirement fund.  
 7 In the event the former employee returns to state service and  
 8 becomes a state employee covered by the system, the amount so  
 9 credited to the retirement fund, if more than \$2, shall be  
 10 restored to ~~his~~ the individual account. If the amount so \*  
 11 credited to the fund is over \$2 and the former employee applies  
 12 for refund or an annuity pursuant to the provisions of section  
 13 352.72, the amount shall be restored to the former employee's  
 14 individual account and refund made or annuity paid whichever  
 15 applies.

16 Subd. 9. REFUNDMENT FOR PERSONS COMMITTED TO STATE  
 17 HOSPITALS. While a former employee is under commitment as an  
 18 inmate of a state hospital under the jurisdiction of the  
 19 commissioner of human services, or of a similar public authority  
 20 if the former employee is an inmate of a state hospital of  
 21 another state, and if the inmate is entitled to a refundment of  
 22 ~~his~~ accumulated employee contributions in the retirement fund in \*  
 23 an amount not to exceed \$300, refundment of such accumulated  
 24 contributions may be made, upon appropriate application  
 25 therefor, to the superintendent of such state hospital of this  
 26 state, or similar public authority of another state if  
 27 authorized so to do by the laws of that state, and such  
 28 refundment shall be a bar to recovery by any other person or  
 29 persons.

30 No change for subd 10

352\*#23S

31 352.23 TERMINATION OF RIGHTS.

32 When any employee accepts a refund as provided in section  
 33 352.22, all existing service credits and all rights and benefits  
 34 to which the employee was entitled prior to the acceptance of  
 35 such refund shall terminate and shall not again be restored  
 36 until the former employee acquires not less than one year's  
 37 allowable service credit subsequent to taking ~~his~~ the last \*  
 38 refund. In that event, ~~he~~ the employee may repay all refunds \*  
 39 ~~which he had~~ previously taken from the retirement fund. \*  
 40 Repayment of refunds will entitle the employee only to credit  
 41 for service covered by (a) salary deductions, (b) payments made  
 42 in lieu of salary deductions, and (c) payments made to obtain  
 43 credit for service as permitted by laws in effect at the time  
 44 payment was made. If an employee before taking one or more  
 45 refunds had credit for prior service or for military service  
 46 without payment in either case, ~~he~~ the employee may obtain \*  
 47 credit for such forfeited service prior to July 1, 1929, and for  
 48 such forfeited military service by making payments at a  
 49 contribution rate of three percent of ~~his~~ the average salary \*  
 50 upon which deductions for the retirement fund were based, for  
 51 the three year period immediately preceding repayment of refund  
 52 for service credit prior to July 1, 1929, and on the salary  
 53 received ~~by him~~ at the time of entering military service to  
 54 restore ~~his~~ military service credit. All such payments and \*  
 55 repayment of refunds are to be paid with interest at six percent  
 56 per annum compounded annually and may be paid in a lump sum or  
 57 by payroll deduction in the manner provided in section 352.04.

352\*#27S

58 352.27 CREDIT FOR MILITARY SERVICE.

59 Any employee given a leave of absence to enter military  
 60 service who returns to state service upon discharge from  
 61 military service as provided in section 192.262, may obtain  
 62 credit for ~~his~~ the period of military service but ~~he~~ shall not \*  
 63 be entitled to credit for any voluntary extension of military  
 64 service at the instance of the employee beyond the initial  
 65 period of enlistment, induction or call to active duty, nor to  
 66 credit for any period of service following a voluntary return to  
 67 military service. Such employee may obtain such credit by  
 68 paying into the fund an employee contribution based upon ~~his~~ the \*  
 69 salary received at the date of return from military service. \*  
 70 The amount of this contribution shall be the applicable amounts  
 71 required in section 352.04, subdivision 2, plus interest at six  
 72 percent per annum compounded annually. In such cases the  
 73 matching employer contribution and additional contribution  
 74 provided in section 352.04 shall be paid by the department

1 employing such employee upon ~~his~~ return to state service from \*  
 2 funds available to such department at the time and in the manner  
 3 provided in section 352.04.

## 352\*#72S

4 352.72 COVERAGE BY MORE THAN ONE RETIREMENT SYSTEM OR  
 5 ASSOCIATION.

6 Subdivision 1. ENTITLEMENT TO ANNUITY. Any person  
 7 who has been an employee covered by the Minnesota state  
 8 retirement system, or a member of the public employees  
 9 retirement association including the public employees retirement  
 10 association ~~police~~ police and firefighter's fund, or the \*  
 11 teachers retirement association, or the state patrol retirement  
 12 association, or any other public employee retirement system in  
 13 the state of Minnesota having a like provision but excluding all  
 14 other funds providing benefits for ~~police~~ police officers or \*  
 15 firefighters shall be entitled when qualified to an annuity from \*  
 16 each fund if ~~his~~ total allowable service in all funds or in any \*  
 17 two of these funds totals ten or more years, provided no portion  
 18 of the allowable service upon which the retirement annuity from  
 19 one fund is based is again used in the computation for benefits  
 20 from another fund and provided further that ~~he~~ a refund has not \*  
 21 been taken ~~a-refundment~~ from any one of these funds since ~~his~~ \*  
 22 service entitling ~~him~~ the employee to coverage under the system \*  
 23 or ~~his~~ the employee's membership in any of the associations last \*  
 24 terminated. The annuity from each fund shall be determined by  
 25 the appropriate provisions of the law except that the  
 26 requirement that a person must have at least ten years allowable  
 27 service in the respective system or association shall not apply  
 28 for the purposes of this section provided the combined service  
 29 in two or more of these funds equals ten or more years.

30 No change for subd 2 to 5

## 352\*#73S

31 352.73 SUPPLEMENTAL BENEFIT FOR FORMER STATE EMPLOYEES.

32 Subdivision 1. Any person who at June 30, 1963, was  
 33 receiving from the state employees retirement fund an annuity or  
 34 retirement allowance based upon not less than 20 years allowable  
 35 service, who is receiving such annuity or retirement allowance  
 36 on June 30, 1967, and

37 (a) who did not have social security coverage as a state  
 38 employee shall receive on and after July 1, 1967 the following  
 39 supplemental benefit: \$18 a month, or

40 (b) who had social security coverage as a state employee  
 41 and who was eligible to receive either an immediate social  
 42 security benefit or who would become eligible to receive a  
 43 social security benefit based in whole or in part upon ~~his~~ \*  
 44 social security coverage as a state employee shall receive on  
 45 and after July 1, 1967, a supplemental benefit of \$10 a month.

46 No change for subd 2 to 3

## 352\*#85S

47 352.85 SPECIAL RETIREMENT COVERAGE FOR MILITARY AFFAIRS  
 48 DEPARTMENT PERSONNEL.

49 No change for subd 1

50 Subd. 2. DISABILITY BENEFIT. An employee described  
 51 in subdivision 1, who is less than 60 years of age and who shall  
 52 become disabled and physically or mentally unfit to perform ~~his~~ \*  
 53 occupational duties due to injury, sickness or other disability, \*  
 54 and who shall be found disqualified for retention on active duty  
 55 as a result of a physical examination required by applicable  
 56 federal laws or regulations, shall be entitled upon application  
 57 to disability benefits computed in the same manner as specified  
 58 in section 352.113. Disability benefits shall be otherwise  
 59 governed by section 352.113, except that the age for the  
 60 termination of the disability benefit shall be 60 years.

61 No change for subd 3 to 6

## 352\*#86S

62 352.86 SPECIAL COVERAGE FOR TRANSPORTATION DEPARTMENT  
 63 PILOTS.

64 No change for subd 1

65 Subd. 1a. DISABILITY BENEFITS. An employee described  
 66 in subdivision 1, who is less than 62 years of age and who  
 67 becomes disabled and physically or mentally unfit to perform ~~his~~ \*  
 68 occupational duties due to injury, sickness, or other \*  
 69 disability, and who is found disqualified for retention as chief  
 70 pilot or pilot as a result of a physical examination required by  
 71 applicable federal laws or regulations, shall be entitled upon  
 72 application to disability benefits for a maximum of five years



1 in the amount of 75 percent of current monthly salary, to be  
 2 paid by the appointing authority from the state airports fund.  
 3 In no case shall disability benefits continue beyond the age of  
 4 62 years. These benefits are in lieu of all other state  
 5 benefits for the disability, including, but not limited to,  
 6 workers' compensation benefits.

7 No change for subd 2 to 4

352\*#91S

8 352.91 COVERED CORRECTIONAL SERVICE.

9 Subdivision 1. Covered correctional service means: (a)  
 10 services performed on, before, or after July 1, 1973, by a state  
 11 employee, as defined in section 352.01, as an attendant guard,  
 12 attendant guard supervisor, correctional captain, correctional  
 13 counselor I, correctional counselor II, correctional counselor  
 14 III, correctional counselor IV, correctional lieutenant,  
 15 correctional officer, correctional sergeant, director of  
 16 attendant guards and guard farmer garden, provided the employee  
 17 was employed in such position on July 1, 1973 or thereafter; (b)  
 18 services performed before July 1, 1973 by an employee covered  
 19 under clause (a) in a position classified as a houseparent,  
 20 special schools counselor, shop instructor or guard instructor;  
 21 and (c) services performed before July 1, 1973 in a position  
 22 listed in clause (a) and positions classified as houseparent,  
 23 guard instructor and guard farmer dairy, by a person employed on  
 24 July 1, 1973 in a position classified as a license plant  
 25 manager, prison industry foreman lead supervisor (general, metal \*  
 26 fabricating and foundry), prison industry supervisor, food \*  
 27 service manager, prison farmer supervisor, prison farmer  
 28 assistant supervisor or rehabilitation therapist employed at the  
 29 Minnesota security hospital. However an employee shall not be  
 30 covered hereunder if first employed after July 1, 1973 and who  
 31 because of his age could not acquire sufficient service to \*  
 32 qualify for an annuity as a correctional employee.

33 Subd. 2. Covered correctional service shall also mean  
 34 service rendered at any time by state employees as special  
 35 teachers, ~~tradesmen-and~~ maintenance personnel, and members of \*  
 36 trades certified by the commissioner of employee relations as \*  
 37 being regularly engaged in rehabilitation, treatment, custody or  
 38 supervision of inmates employed at the Minnesota correctional  
 39 facility-St. Cloud, the Minnesota correctional  
 40 facility-Stillwater and the Minnesota correctional  
 41 facility-Shakopee on or after July 1, 1974, other than any  
 42 employees who are 62 years of age or older as of July 1, 1974,  
 43 and, effective the first payroll period after June 1, 1980 or  
 44 the date of initial employment in covered correctional service,  
 45 whichever is later, shall also include those employees of the  
 46 Minnesota correctional facility-Lino Lakes and the employees of  
 47 any other adult state correctional facility which may be  
 48 established, who perform covered correctional service after June  
 49 1, 1980. The term special teacher shall also include the  
 50 classifications of facility educational administrator and  
 51 supervisor.

52 No change for subd 3 to 4

352\*#93S

53 352.93 RETIREMENT ANNUITY.

54 No change for subd 1 to 2

55 Subd. 3. The annuity under this section shall begin to  
 56 accrue as provided in section 352.115, subdivision 8, and shall  
 57 be paid for an additional 84 full calendar months or to the  
 58 first of the month following the month in which the employee  
 59 becomes age 65, whichever occurs first, except that in no event  
 60 shall payment cease prior to the first of the month following  
 61 the month in which the employee becomes 62, and then be reduced  
 62 to the amount as calculated under section 352.115, except that  
 63 if this amount, when added to the social security benefit based  
 64 on state service the employee is eligible to receive at such  
 65 time, is less than the benefit payable under subdivision 2, the  
 66 retired employee shall receive an amount that when added to such  
 67 social security benefit will equal the amount payable under  
 68 subdivision 2. When an annuity is reduced under this  
 69 subdivision, the percentage adjustments, if any, that have been  
 70 applied to the original annuity under section 11A.18, prior to  
 71 the reduction, shall be compounded and applied to the reduced  
 72 annuity. A former correctional employee employed by the state  
 73 in a position covered by the regular plan between the ages of 58  
 74 and 65 shall receive a partial return of his correctional \*

1 contributions at retirement with five percent interest based on  
2 the following formula:

3			
4	Employee contributions		Years and complete
5	contributed as a		months of regular
6	correctional employee		service between
7	in excess of the		ages 58 and 65
8	contributions such	X	.....
9	employee would have		7
10	contributed as a		
11	regular employee		

12 No change for subd 4

352\*#94S

13 352.94 AUGMENTATION.

14 No change for subd 1

15 Subd. 2. An employee who becomes a regular employee after  
16 serving as a correctional employee shall not be covered under  
17 section 352.72, subdivision 2, with respect to ~~his~~ correctional  
18 service. \*

352\*#95S

19 352.95 DISABILITY BENEFITS.

20 No change for subd 1 to 3

21 Subd. 4. An applicant shall provide medical evidence to  
22 support an application for disability benefits. The director  
23 shall have the employee examined by at least one additional  
24 licensed physician designated by the medical advisor. The  
25 physicians shall make written reports to the director concerning  
26 the employee's disability, including medical opinions as to  
27 whether ~~he-or-she~~ the employee is disabled within the meaning of  
28 this section. The director shall also obtain written  
29 certification from the employer stating whether the employee is  
30 on sick leave of absence because of a disability which will  
31 prevent further service to the employer, and as a consequence  
32 the employee is not entitled to compensation from the employer.  
33 If upon the consideration of the reports of the physicians and  
34 such other evidence as may have been supplied by the employee or  
35 others, the medical advisor finds the employee disabled within  
36 the meaning of this section, ~~he~~ the advisor shall make  
37 appropriate recommendation to the director in writing, together  
38 with the date from which the employee has been disabled, and the  
39 director shall thereupon determine the propriety of authorizing  
40 payment of a disability benefit as provided in this section.  
41 Unless payment of a disability benefit has terminated because  
42 the employee is no longer disabled, or because ~~he-or-she~~ the  
43 employee has reached age 62, the disability benefit shall cease  
44 with the last payment received by the disabled employee or which  
45 had accrued ~~in-his-or-her~~ during the employee's lifetime. \*

46 During the time that disability benefits are paid, the director  
47 shall have the right at reasonable times to require the disabled  
48 employee to submit proof of the continuance of the disability  
49 claimed. If any examination indicates to the medical advisor  
50 that the employee is no longer disabled, the disability payment  
51 shall be discontinued upon reinstatement to state service or  
52 within 60 days of such finding, whichever is sooner.

53 No change for subd 5 to 6

54 Subd. 7. Should the disabled employee resume a gainful  
55 occupation ~~and-his-or-her~~ from which earnings are less than the  
56 salary received at the date of disability or the salary  
57 currently paid for similar positions, or should the employee be  
58 entitled to receive workers' compensation benefits, the  
59 disability benefit shall be continued in an amount which when  
60 added to such earnings and workers' compensation benefits does  
61 not exceed the salary received at the date of disability or the  
62 salary currently paid for similar positions, whichever is  
63 higher, provided the disability benefit in such case does not  
64 exceed the disability benefit originally authorized and in  
65 effect. \*

352B#01S

66 352B.01 DEFINITIONS.

67 No change for subd 1 to 2

68 Subd. 3. "Allowable service" means (a) for those members  
69 defined in subdivision 2, clause (a), service for which payments  
70 have been made to the state patrol retirement fund, and (b) for  
71 those members defined in subdivision 2, clauses (b) and (c),  
72 service for which payments have been made to the state patrol  
73 retirement fund, service for which payments were made to the

1 state police officers retirement fund after June 30, 1961, and  
 2 all prior service which was credited to such member for service  
 3 on or before June 30, 1961; provided that, after a member  
 4 identified in clause (b) of this subdivision reaches the age of  
 5 60, allowable service thereafter shall not be computed in  
 6 determining ~~his~~ the normal annuity unless ~~he~~ the member was \*  
 7 employed as a state police officer before July 1, 1961. If such  
 8 member was so employed before July 1, 1961 and reaches 60 years  
 9 of age and has more than 30 years' allowable service at such  
 10 time, each year and completed month of allowable service  
 11 acquired by such member shall be computed in determining ~~his~~ the \*  
 12 normal annuity until such member reaches the age of 60. If such  
 13 member was so employed before July 1, 1961, and has less than 30  
 14 years of allowable service when the member reaches age 60, each  
 15 year and completed month of allowable service acquired by such  
 16 member shall be computed in determining the normal annuity not  
 17 to exceed 30 years of such allowable service. The completed  
 18 year members reach age 60 may be counted in full in determining  
 19 allowable service. Allowable service also includes any period  
 20 of absence from duty by a member who, by reason of injury  
 21 incurred in the performance of duty, is temporarily disabled and  
 22 for which disability the state is liable under the workers'  
 23 compensation law, until the date authorized by the executive  
 24 director for commencement of payment of a disability benefit or  
 25 return to employment.

26 Subd. 4. "Department head" means the head of any  
 27 department, institution or branch of the state service which  
 28 directly pays salaries from state funds to a member and who  
 29 prepares, approves and submits salary abstracts of ~~his~~ employees \*  
 30 to the commissioner of finance and state treasurer.

31 Subd. 5. Repealed, 1975 c 368 s 51  
 32 No change for subd 6 to 7

33 Subd. 9. "Surviving spouse" means a member's or former  
 34 member's legally married ~~wife-or-husband~~ spouse residing with \*  
 35 ~~him~~ the member or former member at the time of ~~his~~ death and who \*  
 36 was married to ~~him~~ the member or former member, for a period of \*  
 37 at least one year, ~~while~~ during or prior to the time ~~he was a~~ \*  
 38 member of membership. \*

39 No change for subd 10  
 352B#03S

40 352B.03 OFFICERS, DUTIES.  
 41 No change for subd 1

42 Subd. 2. DUTIES OF TREASURER. The state treasurer  
 43 shall be ex officio treasurer of the state patrol retirement  
 44 fund and ~~his~~ the treasurer's general bond to the state shall \*  
 45 cover all liability for ~~his~~ actions as treasurer of the fund. \*

46 All moneys of the fund received by the treasurer pursuant  
 47 to this chapter, shall be set aside ~~by him~~ in the state treasury \*  
 48 and credited to the state patrol retirement fund. ~~He~~ The \*  
 49 treasurer shall transmit, monthly, to the director, a detailed \*  
 50 statement showing all credits to and disbursements from said \*  
 51 fund. ~~He~~ The treasurer shall disburse moneys from such fund \*  
 52 only on warrants issued by the commissioner of finance upon \*  
 53 vouchers signed by the director.

352B#08S

54 352B.08 BENEFITS.

55 Subdivision 1. Every member who is credited with ten or  
 56 more years of allowable service shall be entitled to separate  
 57 ~~himself~~ from such state service and upon attaining the age of 55 \*  
 58 years, shall be entitled to receive a life annuity, upon ~~his~~ \*  
 59 separation from state service. Members shall make application  
 60 for an annuity in a form and manner prescribed by the executive  
 61 director. No application may be made more than 60 days prior to  
 62 the date the member is eligible to retire by reason of both age  
 63 and service requirements. An annuity shall begin to accrue no  
 64 earlier than 90 days prior to the date the application is filed  
 65 with the executive director.

66 No change for subd 2

352B#10S

67 352B.10 DISABILITY, BENEFITS.

68 (1) Any member less than 55 years of age, who shall become \*  
 69 disabled and physically unfit to perform ~~his~~ duties as a direct \*  
 70 result of an injury, sickness, or other disability incurred in  
 71 or arising out of any act of duty, which shall render the member  
 72 physically or mentally unable to perform ~~his-or-her~~ duties, \*  
 73 shall receive disability benefits during the period of such

1 disability. The benefits shall be paid in monthly installments  
2 equal to that portion of the average monthly salary of the  
3 member multiplied (a) by 50 percent and, (b) by an additional  
4 2-1/2 percent for each year and pro rata for completed months of  
5 service in excess of 20 years, but not exceeding 25 years and  
6 two percent for each year and pro rata for completed months of  
7 service in excess of 25 years.

8 (2) Any member who after not less than five years of  
9 service, before reaching the age of 55, terminates employment  
10 because of sickness or injury occurring while not on duty and  
11 not engaged in state work entitling the member to membership and  
12 the termination is necessary because the member is unable to  
13 perform ~~his-or-her~~ duties shall be entitled to receive a \*  
14 disability benefit. The benefit shall be in the same amount and  
15 computed in the same manner as if the member were 55 years of  
16 age at the date of disability and the annuity were paid pursuant  
17 to section 352B.08. Should disability under this clause occur  
18 after five but in less than ten years service, the disability  
19 benefit shall be computed as though the member had ten years  
20 service.

21 (3) No member shall receive any disability benefit payment  
22 when the member has unused annual leave or sick leave or under  
23 any other circumstances, when during the period of disability  
24 there has been no impairment of salary. Should such member or  
25 former member resume a gainful occupation and ~~his-or-her~~ have \*  
26 earnings ~~are~~ less than the salary received at the date of \*  
27 disability or the salary currently paid for similar positions,  
28 the disability benefit shall be continued in an amount which  
29 when added to earnings does not exceed the salary received at  
30 the date of disability or the salary currently paid for similar  
31 positions, whichever is higher, provided the disability benefit  
32 in such case does not exceed the disability benefit originally  
33 allowed.

34 (4) No disability benefit payment shall be made except upon  
35 adequate proof furnished to the director of the existence of  
36 such disability, and during the time when any such benefits are  
37 being paid, the director shall have the right, at reasonable  
38 times, to require the disabled former member to submit proof of  
39 the continuance of the disability claimed.

40 (5) A disabled member not eligible for survivorship  
41 coverage pursuant to section 352B.11, subdivision 2, may elect  
42 the normal disability benefit or an optional annuity as provided  
43 in section 352B.08, subdivision 2. The election of an optional  
44 annuity shall be made prior to commencement of payment of the  
45 disability benefit and shall be effective 30 days after receipt  
46 of this election or the date on which the disability benefit  
47 begins to accrue, whichever occurs later. Upon becoming  
48 effective, the optional annuity shall begin to accrue on the  
49 same date as provided for the disability benefit.

352B#11S

50 352B.11 RETIREES.

51 Subdivision 1. REFUND OF PAYMENTS. Should any member  
52 who has not received other benefits under this chapter become  
53 separated, either voluntarily or involuntarily, from state  
54 service that entitled ~~him-or-her~~ the member to ~~be-a~~ \*  
55 member membership, the member, or in the event of the member's \*  
56 death, the member's estate, shall be entitled to receive a  
57 refund of all payments which have been made by salary deductions  
58 plus interest at the rate of five percent per annum compounded  
59 annually upon application on a form prescribed by the executive  
60 director.

61 Subd. 2. DEATH; PAYMENT TO SPOUSE AND CHILDREN. In  
62 the event any member serving actively as a member, a member  
63 receiving the disability benefit provided by section 352B.10,  
64 clause (1), or a former member receiving a disability benefit as  
65 provided by section 352B.10, clause (3) dies from any cause, the  
66 surviving spouse and dependent child or dependent children shall  
67 be entitled to benefit payments as follows:

68 (a) A member with at least ten years of allowable service  
69 or a former member with at least 20 years of allowable service  
70 is deemed to have elected a 100 percent joint and survivor  
71 annuity payable to a surviving spouse only on or after the date  
72 the member or former member attained or would have attained the  
73 age of 55.

74 (b) The surviving spouse of a member who had credit for  
75 less than ten years of service shall receive, for life, a

1 monthly annuity equal to 20 percent of that portion of the  
2 average monthly salary of the member from which deductions were  
3 made for retirement. If the surviving spouse remarries, the  
4 annuity shall cease as of the date of the remarriage.

5 (c) The surviving spouse of a member who had credit for at  
6 least ten years of service and who dies after attaining 55 years  
7 of age, may elect to receive a 100 percent joint and survivor  
8 annuity, for life, notwithstanding a subsequent remarriage, in  
9 lieu of the annuity prescribed in clause (b).

10 (d) The surviving spouse of any member who had credit for  
11 ten years or more and who was not 55 years of age at death,  
12 shall receive the benefit equal to 20 percent of the average  
13 monthly salary as described in clause (b) until the deceased  
14 member would have reached his-or-her-55th-birthday the age of 55  
15 years, and beginning the first of the month following that date,  
16 may elect to receive the 100 percent joint and survivor  
17 annuity. If the surviving spouse remarries prior to the  
18 deceased member's 55th birthday, all benefits or annuities  
19 shall cease as of the date of remarriage. Remarriage subsequent  
20 to the deceased member's 55th birthday shall not affect the  
21 payment of the benefit.

22 (e) Each dependent child shall receive a monthly annuity  
23 equal to ten percent of that portion of the average monthly  
24 salary of the former member from which deductions were made for  
25 retirement. A dependent child over the age of 18 years and  
26 under the age of 22 years also may receive the monthly benefit  
27 provided herein, if the child is continuously attending an  
28 accredited school as a full time student during the normal  
29 school year as determined by the director. If the child does  
30 not continuously attend school but separates from full time  
31 attendance during any portion of a school year, the annuity  
32 shall cease at the end of the month of separation. In addition,  
33 a payment of \$20 per month shall be prorated equally to  
34 surviving dependent children when the former member is survived  
35 by one or more dependent children. Payments for the benefit of  
36 any qualified dependent child shall be made to the surviving  
37 spouse, or if there be none, to the legal guardian of the  
38 child. The maximum monthly benefit shall not exceed 40 percent  
39 of the average monthly salary for any number of children.

40 (f) If the member shall die under circumstances which  
41 entitle the surviving spouse and dependent children to receive  
42 benefits under the workers' compensation law, amounts equal to  
43 the workers' compensation benefits received by them shall not be  
44 deducted from the benefits payable pursuant to this section.

45 (g) The surviving spouse of a deceased former member who  
46 had credit for ten or more years of allowable service, but  
47 excluding the spouse of a former member receiving a disability  
48 benefit under the provisions of section 352B.10, clause (3),  
49 shall be entitled to receive the 100 percent joint and survivor  
50 annuity at such time as the deceased member would have reached  
51 his-or-her-55th-birthday the age of 55 years, provided the  
52 surviving spouse has not remarried prior to that date. In the  
53 event of the death of a former member who does not qualify for  
54 other benefits under this chapter, the surviving spouse or, if  
55 none, the children or heirs shall be entitled to receive a  
56 refund of the accumulated deductions left in the fund plus  
57 interest at the rate of five percent per annum compounded  
58 annually.

59 No change for subd 2a to 3

60 Subd. 4. RE-ENTRY INTO STATE SERVICE. Should any  
61 former member, who has become separated from state service that  
62 entitled him the member to be-a-member membership and has  
63 received a refund of his retirement payments, re-enter the state  
64 service in a position that entitles him-to-be-a-member, he the  
65 member to membership, that member shall receive credit for the  
66 period of his prior allowable state service provided he the  
67 member repays into the fund the amount of his the refund, plus  
68 interest thereon at the rate of five percent per annum, at any  
69 time prior to his subsequent retirement. Repayment may be made  
70 in installments or in a lump sum.

352B#131S

71 352B.131 PRIOR OPTIONS EXERCISED.

72 Any state police officer, as defined in Minnesota Statutes  
73 1969, Section 352A.01, Subdivision 2, who exercised the options  
74 provided for in Minnesota Statutes 1969, Sections 352A.11 and  
75 352A.12, and, who did not revoke such election pursuant to

1 Minnesota Statutes 1969, Section 352A.11, shall not be entitled  
 2 to any annuities or other benefits under this chapter. If such  
 3 state police officer remains in state service as a state police  
 4 officer, ~~he shall continue to make~~ payments to the state patrol  
 5 retirement fund shall be made in the manner provided in section  
 6 352B.02, and ~~his~~ the department head shall make the payments to  
 7 the state patrol retirement fund as therein provided. \*

352B#14S

8 352B.14 LAW GOVERNING BENEFITS.  
 9 Subdivision 1. Except as provided in subdivision 4, every  
 10 member who retires and is entitled to any annuity shall receive  
 11 the retirement annuity computed on the basis of the law in  
 12 effect at the date of ~~his~~ retirement. \*

13 Subd. 2. Except as provided in subdivision 4, every member  
 14 who terminates state service and is entitled to a retirement  
 15 annuity shall receive such annuity computed on the basis of the  
 16 law in effect on the date ~~his~~ state service terminated. \*

17 No change for subd 3 to 4

18 Subd. 5. Notwithstanding the provisions of subdivisions 1  
 19 to 4 hereof, the retirement annuities or benefits provided for  
 20 highway ~~patrolmen~~ patrol officers under Minnesota Statutes 1961,  
 21 Sections 172.01 to 172.11, and as in effect on April 21, 1961,  
 22 shall also apply to annuitants who retired and to those entitled  
 23 to survivors benefits, under said sections, on or prior to April  
 24 21, 1961. Any additional annuities or benefits provided for by  
 25 this subdivision shall be available only after July 1, 1965. \*

352B#27S

26 352B.27 SAVINGS CLAUSE.  
 27 No change for subd 1

28 Subd. 2. Except as otherwise specifically provided in this  
 29 chapter, all persons who on May 8, 1973 are receiving any  
 30 benefit, annuity or payment from the highway ~~patrolmen's~~ patrol  
 31 officers' retirement fund shall, after May 8, 1973, receive the  
 32 same benefit, annuity or payment from said fund. \*

352B#28S

33 352B.28 SURVIVING SPOUSE BENEFITS.  
 34 Subdivision 1. Upon the death of any highway ~~patrolman~~  
 35 patrol officer who retired or separated from state service prior  
 36 to July 1, 1965, the surviving spouse, if legally married to the  
 37 ~~patrolman~~ patrol officer during ~~his~~ service as a ~~patrolman~~  
 38 patrol officer and residing with ~~him~~ the officer at the time of  
 39 death, shall receive for life an annuity of \$125 per month. \*

40 Subd. 2. The annuity of a surviving spouse of a member of  
 41 the highway patrol who retired or separated from active service  
 42 prior to July 1, 1965, and the surviving spouse of a highway  
 43 ~~patrolman~~ patrol officer who dies in service prior to the  
 44 effective date of Laws 1969, Chapter 693, and who on May 25,  
 45 1973 is receiving an annuity of less than \$125 per month, shall  
 46 thereafter be increased to \$125 per month. \*

47 No change for subd 3 to 4

352B#30S

48 352B.30 COVERAGE BY MORE THAN ONE RETIREMENT SYSTEM OR  
 49 ASSOCIATION.

50 Subdivision 1. ENTITLEMENT TO ANNUITY. Any person  
 51 who has been an employee covered by the Minnesota state  
 52 retirement system, or a member of the public employees  
 53 retirement association including the public employees retirement  
 54 association ~~police~~ police and firefighter's fund, or the  
 55 teachers retirement association, or the state patrol retirement  
 56 fund, or any other public employee retirement system in the  
 57 state of Minnesota having a like provision but excluding all  
 58 other funds providing benefits for ~~police~~ police or  
 59 firefighters shall be entitled when qualified to an annuity from  
 60 each fund if ~~his~~ total allowable service in all funds or in any  
 61 two of these funds totals ten or more years, provided no portion  
 62 of the allowable service upon which the retirement annuity from  
 63 one fund is based is again used in the computation for benefits  
 64 from another fund and provided further that ~~he~~ the member has  
 65 not taken a refund from any one of these funds since ~~his~~ service  
 66 entitling ~~him~~ the member to coverage under the system or ~~his~~  
 67 membership in any of the associations last terminated. The  
 68 annuity from each fund shall be determined by the appropriate  
 69 provisions of the law except that the requirement that a person  
 70 must have at least ten years allowable service in the respective  
 71 system or association shall not apply for the purposes of this  
 72 section provided the combined service in two or more of these \*

1 funds equals ten or more years.  
2 No change for subd 2 to 3

352C#01S

3 352C.01 LEGISLATIVE FINDING AND INTENT.

4 The legislature finds that service to Minnesota in the  
5 capacity of a constitutional officer or commissioner as defined  
6 in section 352C.021 constitutes a unique contribution to the  
7 state and that such service is dissimilar to any other public  
8 employment. The legislature further finds that service as a  
9 constitutional officer or commissioner for a period of eight  
10 years or longer deprives the individual so serving of normal  
11 opportunities to establish retirement benefits in ~~his~~ a usual \*  
12 vocational pursuit and justifies adoption of special retirement  
13 provisions. The provisions of this chapter are intended by the  
14 legislature to reflect the unique nature of service as a  
15 constitutional officer or commissioner and to have due regard  
16 for the unusual disruption of normal retirement planning that  
17 such service entails.

352C#021S

18 352C.021 DEFINITIONS.

19 No change for subd 1 to 5

20 Subd. 6. DEPENDENT CHILD. "Dependent child" means  
21 any natural or adopted child of a deceased constitutional  
22 officer or commissioner or a deceased former constitutional  
23 officer or commissioner who is under the age of 18, or who is  
24 under the age of 22 and is a full time student, and who in  
25 either case is unmarried and was actually dependent for more  
26 than one-half of ~~his~~ the child's support upon the constitutional \*  
27 officer or commissioner or the former constitutional officer or  
28 commissioner for a period of least 90 days immediately prior to  
29 the death of the constitutional officer or commissioner or the  
30 former constitutional officer or commissioner. The term shall  
31 also include a posthumous child of the constitutional officer or  
32 commissioner or the former constitutional officer or  
33 commissioner.

34 No change for subd 7 to 8

352C#04S

35 352C.04 SPOUSE'S AND DEPENDENT CHILDREN'S SURVIVOR  
36 BENEFITS.

37 No change for subd 1

38 Subd. 2a. SURVIVING DEPENDENT CHILD BENEFIT. Upon  
39 the death of a constitutional officer or commissioner while  
40 serving in office, or a former constitutional officer or  
41 commissioner with at least eight years of allowable service,  
42 each dependent child shall be paid a survivor benefit in the  
43 following amount: First dependent child, a monthly benefit  
44 which equals 25 percent of the monthly retirement allowance of  
45 the constitutional officer or commissioner computed as though  
46 the constitutional officer or commissioner or the former  
47 constitutional officer or commissioner were at least age 62 on  
48 the date of ~~his~~ death and based upon the attained allowable \*  
49 service or eight years, whichever is greater; for each  
50 additional dependent child or a monthly benefit which equals 12  
51 1/2 percent of the monthly retirement allowance of the  
52 constitutional officer or commissioner or the former  
53 constitutional officer or commissioner computed as in the case  
54 of the first child; but the total amount paid to the surviving  
55 spouse and dependent children shall not exceed in any one month  
56 100 percent of the monthly allowance of the constitutional  
57 officer or commissioner or the former constitutional officer or  
58 commissioner computed as in the case of the first child. The  
59 augmentation provided in subdivision 1, if applicable, shall be  
60 applied to the month of death. Upon the death of a former  
61 constitutional officer or commissioner receiving a retirement  
62 allowance, the surviving dependent child shall be entitled to  
63 the applicable percentage of the amount of the retirement  
64 allowance being paid to the former constitutional officer or  
65 commissioner as of the date of death. The payments for  
66 dependent children shall be made to the surviving spouse or the  
67 guardian of the estate of the dependent child, if there is one.  
68 A posthumous child qualifies as a dependent child for benefits  
69 provided herein from the date of its birth.

70 Subd. 2b. Repealed, 1976 c 329 s 36

71 No change for subd 3 to 4

352C#051S

72 352C.051 COVERAGE BY MORE THAN ONE RETIREMENT SYSTEM OR

1 ASSOCIATION.  
 2 No change for subd 1  
 3 Subd. 2. ENTITLEMENT TO ANNUITY; PUBLIC RETIREMENT  
 4 SERVICE. Any constitutional officer or commissioner who has  
 5 been an employee covered by the Minnesota state retirement  
 6 system, or a member of the public employees retirement  
 7 association including the public employees retirement  
 8 association police and fire fund, or the teachers retirement  
 9 association, or the Minneapolis employees retirement fund, or  
 10 the state patrol retirement association, or any other public  
 11 employee retirement system in the state of Minnesota having a  
 12 like provision, but excluding all other funds providing  
 13 retirement benefits for police and firefighters, shall be  
 14 entitled when qualified to an annuity from each fund if the  
 15 person's total allowable service ~~for which he has~~ credit in all \*  
 16 funds or in any two of these funds totals ten or more years,  
 17 provided no portion of the allowable service upon which the  
 18 retirement annuity from one fund is based is again used in the  
 19 computation for benefits from another fund. The annuity from  
 20 each fund shall be determined by the appropriate provisions of  
 21 the law governing each fund, except that the requirement that a  
 22 person must have at least ten years allowable service in the  
 23 respective system or association shall not apply for the  
 24 purposes of this section, provided that the aggregate service in  
 25 two or more of these funds equals ten or more years. The  
 26 augmentation of deferred annuities provided in section 352C.033  
 27 shall apply to the annuities accruing hereunder.

28 No change for subd 3  
 352C#09S

29 352C.09 CONTRIBUTIONS.  
 30 Subdivision 1. Every constitutional officer or  
 31 commissioner shall contribute eight percent of ~~his or her~~ total \*  
 32 salary beginning the first full pay period after July 1, 1976,  
 33 and nine percent of ~~his or her~~ total salary beginning the first \*  
 34 full pay period after January 1, 1979, by payroll deduction, to  
 35 be paid into the state treasury and deposited in the general  
 36 fund. In case of retirement any unpaid deductions shall be  
 37 deducted from any retirement allowance that becomes payable.  
 38 All deductions and payments, if any, in lieu of deductions are  
 39 to be paid into the state treasury and deposited in the general  
 40 fund. It shall be the duty of the director to record the  
 41 contributions of each constitutional officer or commissioner and  
 42 credit such contribution to such officer's or commissioner's  
 43 account.

44 Subd. 2. (1) Any person who has made contributions  
 45 pursuant to subdivision 1 who is no longer a constitutional  
 46 officer or commissioner is entitled to receive upon application  
 47 to the director a refund of all contributions credited to ~~his or~~ \*  
 48 ~~her~~ the individual's account with interest at the rate of five \*  
 49 percent per annum compounded annually.

50 (2) The refund of contributions as provided in clause (1)  
 51 above terminates all rights of a former constitutional officer  
 52 or commissioner or ~~his or her~~ survivors thereof under the \*  
 53 provisions of this chapter. Should the former constitutional  
 54 officer or commissioner again hold such office after having  
 55 taken a refund as provided above, ~~he or she~~ the former officer \*  
 56 or commissioner shall be considered a new member and may \*  
 57 reinstate the rights and credit for service forfeited  
 58 provided ~~he or she repays~~ all refunds previously taken plus are \*  
 59 repaid with interest at six percent per annum compounded \*  
 60 annually.

61 (3) No person shall be required to apply for or accept a  
 62 refund.

352C#091S

63 352C.091 ADMINISTRATION.  
 64 No change for subd 1 to 2  
 65 Subd. 3. Laws 1978, Chapter 796, Sections 12 to 22 shall  
 66 apply to constitutional officers and commissioners in office on  
 67 and after July 1, 1977. Any constitutional officer or  
 68 commissioner in office on the effective date of Laws 1978,  
 69 Chapter 796 shall be entitled to elect to have ~~his~~ the \*  
 70 retirement allowance payable computed pro rata under the \*  
 71 provisions of Minnesota Statutes 1976, Chapter 352C for all  
 72 service prior to the effective date of Laws 1978, Chapter 796  
 73 and the provisions of this chapter, as amended by Laws 1978,  
 74 Chapter 796, for all service subsequent to the effective date of



1 Laws 1978, Chapter 796, or to have ~~his~~ the retirement allowance \*  
 2 computed entirely under the provisions of this chapter, as  
 3 amended by Laws 1978, Chapter 796. Any former constitutional  
 4 officer or commissioner who terminated active service prior to  
 5 July 1, 1977 but has not yet applied to receive a retirement  
 6 allowance under the provisions of this chapter shall be entitled  
 7 to apply for and commence receipt of a retirement allowance at  
 8 the age specified in section 352C.031, subdivision 1, be covered  
 9 by the deferred annuities augmentation provision contained in  
 10 section 352C.04, subdivision 1, and be included in the coverage  
 11 by more than one retirement system provision set forth in  
 12 section 352C.051.

352D#02S

13 352D.02 COVERAGE.

14 No change for subd 1 to 1b

15 Subd. 2. A person becoming a participant in the  
 16 unclassified program by virtue of employment in a position  
 17 specified in subdivision 1, clause (2) and remaining in the  
 18 unclassified service shall remain a participant in the program  
 19 even though the position the person occupies is deleted from any  
 20 of the sections referenced in subdivision 1, clause (2) by  
 21 subsequent amendment, except that a person shall not be eligible  
 22 to elect the unclassified program after separation from  
 23 unclassified service if on the return of the person to service,  
 24 that position is not specified in subdivision 1, clause (2).  
 25 Any person employed in a position specified in subdivision 1  
 26 shall cease to participate in the unclassified program in the  
 27 event ~~his~~ the position is placed in the classified service. \*

28 Subd. 3. An election to not participate is irrevocable \*  
 29 during any period of covered employment. An employee credited \*  
 30 with employee shares ~~to his credit~~ in the unclassified program, \*  
 31 after acquiring credit for ten years of allowable service but \*  
 32 prior to termination of covered employment, may, notwithstanding \*  
 33 other provisions of this subdivision, elect to terminate ~~his~~ \*  
 34 participation in the unclassified plan and be covered by the \*  
 35 regular plan by filing such election with the executive \*  
 36 director. The executive director shall thereupon redeem the \*  
 37 employee's total shares and shall credit to the employee's \*  
 38 account in the regular plan the amount of contributions that \*  
 39 would have been so credited had the employee been covered by the \*  
 40 regular plan during ~~his~~ the employee's entire covered employment. \*  
 41 The balance of moneys so redeemed and not credited to the \*  
 42 employee's account shall be transferred to the state \*  
 43 contribution reserve of the state employees retirement fund,  
 44 except that the employee contribution paid to the unclassified  
 45 plan in excess of that required by the general employee plan  
 46 shall be refunded to the employee as provided in section 352.22.

47 No change for subd 4

352D#04S

48 352D.04 INVESTMENT OPTIONS.

49 Subdivision 1. An employee exercising ~~his~~ an option to \*  
 50 participate in the retirement program provided by this chapter  
 51 may elect to purchase shares in one or a combination of the  
 52 income share account, the growth share account or the  
 53 fixed-return account of the supplemental retirement fund in  
 54 accordance with one of the following options:

- 55 (1) 100 percent invested in the income share account;
- 56 (2) 75 percent invested in the income share account and 25  
57 percent invested in the growth share account;
- 58 (3) 50 percent invested in the income share account and 50  
59 percent invested in the growth share account;
- 60 (4) 100 percent invested in the fixed-return account; or
- 61 (5) 75 percent invested in the fixed-return account and 25  
62 percent invested in the growth share account.

63 Prior to December 31 of each year, each participant may  
 64 indicate in writing on forms provided by the Minnesota state  
 65 retirement system ~~his~~ a choice of options for subsequent \*  
 66 purchases of shares. Thereafter until a different written \*  
 67 indication is made by such participant the executive director  
 68 shall purchase shares in the supplemental fund as selected by  
 69 the participant. If no initial option is chosen, 100 percent  
 70 income shares shall be purchased for a participant.

71 No change for subd 2

352D#05S

72 352D.05 WITHDRAWAL OPTIONS.

73 No change for subd 1

1 Subd. 3. Thirty days after termination of covered  
 2 employment or at any time thereafter a participant shall be  
 3 entitled upon application, to withdraw the cash value of ~~his~~ the  
 4 participant's total shares or may leave such shares on deposit  
 5 with the supplemental retirement fund. Shares not withdrawn  
 6 shall remain on deposit with the supplemental retirement fund  
 7 until the former participant attains the age of at least 58  
 8 years, and applies for an annuity as provided in section  
 9 352D.06, subdivision 1.

10 No change for subd 4 to 5

352D#06S

11 352D.06 ANNUITIES.

12 Subdivision 1. When a participant attains at least age 58,  
 13 is retired from covered service, and applies for a retirement  
 14 annuity, the cash value of ~~his~~ the participant's shares shall be  
 15 transferred to the Minnesota post-retirement investment fund and  
 16 used to provide an annuity for the retired employee based  
 17 upon ~~his~~ the participant's age when the benefit begins to accrue  
 18 according to the reserve basis used by the regular fund in  
 19 determining pensions and reserves.

20 Subd. 2. A participant ~~may, at his option,~~ has the option  
 21 in ~~his~~ an application for an annuity to apply for and receive  
 22 the value of one-half of the total shares and thereafter receive  
 23 an annuity, as provided in subdivision 1, based on the value of  
 24 one-half of the total shares.

25 No change for subd 3

352D#065S

26 352D.065 DISABILITY BENEFITS.

27 Subd. 2. ~~If~~ A participant who becomes totally and  
 28 permanently disabled ~~he may, at his option,~~ has the option even  
 29 if on leave of absence without pay, to receive:

30 (1) The value of ~~his~~ the participant's total shares;

31 (2) The value of one-half of the total shares and an  
 32 annuity based on the value of one-half of the total shares; or

33 (3) An annuity based on the value of ~~his~~ the participant's  
 34 total shares.

35 No change for subd 3 to 5

352D#075S

36 352D.075 DEATH BENEFITS.

37 Subd. 2. If a participant dies leaving a spouse and there  
 38 is no named beneficiary who survives to receive payment or the  
 39 spouse is named beneficiary, the spouse may receive:

40 (1) The value of ~~his~~ the participant's total shares;

41 (2) The value of one-half of the total shares and beginning  
 42 at age 58 or thereafter receive an annuity based on the value of  
 43 one-half of the total shares, provided that if the spouse dies  
 44 before receiving any annuity payments the value of said shares  
 45 shall be paid to the spouse's children in equal shares, but if  
 46 no such children survive then to the parents of the spouse in  
 47 equal shares, but if no such children or parents survive, then  
 48 to the estate of the spouse; or

49 (3) Beginning at age 58 or thereafter receive an annuity  
 50 based on the value of the total shares, provided that if the  
 51 spouse dies before receiving any annuity payments the value of  
 52 said shares shall be paid to the spouse's children in equal  
 53 shares, but if no such children survive then to the parents of  
 54 the spouse in equal shares, but if no such children or parents  
 55 survive, then to the estate of the spouse; and further provided,  
 56 if said spouse dies after receiving annuity payments but before  
 57 receiving payments equal to the value of the employee shares,  
 58 the value of the employee shares remaining shall be paid to the  
 59 spouse's children in equal shares, but if no such children  
 60 survive then to the parents of the spouse in equal shares, but  
 61 if no such children or parents survive, then to the estate of  
 62 the spouse.

63 No change for subd 3

352D#085S

64 352D.085 COMBINED SERVICE.

65 Subdivision 1. Service under the unclassified program for  
 66 which the employee ~~has~~ has been credited with employee shares ~~to~~  
 67 ~~his credit~~, may be used for the limited purpose of qualifying  
 68 for benefits under sections 352.115, 352.72, subdivision 1, and  
 69 352.113; provided such service may not be used to qualify for a  
 70 disability benefit under section 352.113 if a participant was  
 71 under the unclassified program at the time of the disability,  
 72 and provided further that the years of service and salary paid

1 while such participant was in the unclassified program shall not  
2 be used in determining the amount of benefits.

3 Subd. 2. Repealed, 1975 c 368 s 51

352D#11S

4 352D.11 PURCHASE OF PRIOR SERVICE CREDIT.

5 No change for subd 1 to 2

6 Subd. 3. CERTIFICATION. Proof of all legislative  
7 employment and the duration of all legislative employment shall  
8 be established for current or former employees by certification  
9 of the appropriate employer:

10 (1) by the committee on rules and administration of the  
11 senate;

12 (2) by the committee on rules and legislative  
13 administration of the house of representatives; or

14 (3) by the agency director or commission chairman chair for \*  
15 service as an employee of a joint legislative staff agency or  
16 legislative commission.

17 Certification to the executive director of the state  
18 retirement system shall include the exact period or periods of  
19 employment for which the employee or qualified former employee  
20 is entitled to obtain service credit. Service credit shall be  
21 computed and granted upon receiving payment based on the  
22 relationship that the temporary, intermittent, or contract  
23 service bears to full-time employment.

24 No change for subd 4

353\*#01S

25 353.01 DEFINITIONS.

26 No change for subd 1 to 3

27 Subd. 4. ACCUMULATED DEDUCTIONS. "Accumulated  
28 deductions" means the total of the amounts deducted from the  
29 salary of a member, exclusive of interest, and the total of the  
30 amounts paid by a member in lieu of such deductions and credited  
31 to his the member's individual account in the retirement fund. \*

32 Subd. 5. Repealed, 1971 c 106 s 40

33 No change for subd 6 to 14

34 Subd. 15. DEPENDENT CHILD. "Dependent child" means  
35 any natural or adopted child of a deceased member, provided such  
36 child is (a) under the age of 18, (b) age 18 through 21 and a  
37 full time student, and in either case unmarried and dependent  
38 for more than one-half of his support upon such member at the \*  
39 time of death and for not less than 90 days prior thereto;  
40 provided, that the child of a deceased member, who at the time \*  
41 of his death was receiving total and permanent disability \*  
42 benefits pursuant to section 353.33, shall be deemed dependent \*  
43 if ~~he was~~ dependent upon the decedent for more than one-half of \*  
44 his support during the 90 days prior to the decedent's becoming \*  
45 totally and permanently disabled. It also includes any child of \*  
46 the member conceived during his the member's lifetime and born \*  
47 after his death. It also means any dependent child who is the \*  
48 subject of adoption proceedings filed by a member, and who  
49 within two years after death of the member, by judgment and  
50 decree duly entered, is adjudged to be the adopted child of the  
51 deceased member; subject, however, to the qualifying conditions  
52 of age and dependency aforesaid and the dependency of the child  
53 hereunder shall date from the decree of adoption.

54 Subd. 16. ALLOWABLE SERVICE. "Allowable service"  
55 means:

56 (1) Service during years of actual membership in the course  
57 of which employee contributions were currently made; periods  
58 covered by payments in lieu of salary deductions made as  
59 provided in section 353.35, and service in years during which  
60 the public employee was not a member but for which he the member \*  
61 later elected, while a member, to obtain credit by making  
62 payments to the fund as permitted by any law then in effect.

63 (2) Any period of authorized leave of absence with pay from  
64 which deductions for employee contributions are made, deposited,  
65 and credited to the fund.

66 (3) Any period of authorized leave of absence without pay  
67 which does not exceed one year, and during or for which a member  
68 obtained credit by payments to the fund made in lieu of salary  
69 deductions, provided that such payments are made in an amount or  
70 amounts based on his the member's average salary on which \*  
71 deductions were paid (a) for the last six months of public \*  
72 service, or (b) that portion of the last six months while he the \*  
73 member was in public service, to apply to the period in either \*  
74 case immediately preceding commencement of such leave of

1 absence; provided, however, that if the employee elects to pay  
 2 employee contributions for the period of any leave of absence  
 3 without pay, or for any portion thereof, ~~he~~ the employee shall \*  
 4 also, as a condition to the exercise of such election, pay to  
 5 the fund an amount equivalent to both the required employer and  
 6 additional employer contributions therefor, such payment to be  
 7 made currently or within one year from the date the leave of  
 8 absence terminates, unless the employer by appropriate action of  
 9 its governing body and made a part of its official records,  
 10 prior to the date of the first payment of such employee  
 11 contribution, certifies to the association in writing that it  
 12 will cause to be paid such employer and additional employer  
 13 contributions from the proceeds of a tax levy made pursuant to  
 14 section 353.28. Payments under this clause shall include  
 15 interest at the rate of six percent per annum from the date of  
 16 the termination of the leave of absence to the date payment is  
 17 made.

18 (4) Any period during which a member is on an authorized  
 19 sick leave of absence, without pay limited to one year, or an  
 20 authorized temporary layoff.

21 (5) Any period during which a member is on an authorized  
 22 leave of absence to enter military service, provided that the  
 23 member returns to public service upon discharge from military  
 24 service pursuant to section 192.262, and pays into the fund  
 25 employee contributions based upon ~~his~~ the employee's salary at \*  
 26 the date of return from military service. After June 30, 1983  
 27 payment must be made within five years of the date of discharge  
 28 from the military service. The amount of these contributions  
 29 shall be in accord with the contribution rates and salary  
 30 limitations, if any, in effect during such leave, plus interest  
 31 thereon at six percent per annum compounded annually from the  
 32 date of return to public service to the date payment is made.  
 33 In such cases the matching employer contribution and additional  
 34 employer contribution provided in section 353.27, subdivisions 3  
 35 and 3a, shall be paid by the department employing such member  
 36 upon ~~his~~ return to public service and the governmental \*  
 37 subdivision involved is hereby authorized to appropriate money  
 38 therefor. Such member shall not receive credit for any  
 39 voluntary extension of military service at the instance of the  
 40 member beyond the initial period of enlistment, induction or  
 41 call to active duty.

42 (6) For calculating benefits under sections 353.30, 353.31,  
 43 353.32, and 353.33 for state officers and employees displaced by  
 44 the community corrections act, Minnesota Statutes 1984, chapter  
 45 401, and transferred into county service under Minnesota  
 46 Statutes 1984, section 401.04, allowable service means combined  
 47 years of allowable service as defined in Minnesota Statutes  
 48 1984, section 352.01, subdivision 11, and Minnesota Statutes  
 49 1984, section 353.01, subdivision 16, paragraphs (1) to (5).

50 No change for subd 17 to 27

51 Subd. 28. RETIREMENT. "Retirement" means the  
 52 withdrawal of a member from active public service who is paid a  
 53 retirement annuity thereafter and commences with the date  
 54 designated by the board of trustees when the retirement annuity  
 55 shall first accrue to the former member after ~~his~~ withdrawal \*  
 56 from active public service. This date shall determine any  
 57 rights specified in this chapter which occur either before or  
 58 after retirement, as the case may be; but if there is not a  
 59 complete and continuous separation from public service for 30  
 60 days following the withdrawal from public service for the  
 61 purpose of retirement, no rights shall accrue thereunder and  
 62 retirement shall not be accomplished thereby.

63 Subd. 29. DESIGNATED BENEFICIARY. "Designated  
 64 beneficiary" means the person designated by a member in writing,  
 65 filed with the association, to receive a refund of the balance  
 66 of ~~his~~ the member's accumulated deductions after death. \*

67 No change for subd 30

68 Subd. 31. LEAVE OF ABSENCE. "Leave of absence"  
 69 means any period during which a member is duly authorized by ~~his~~ \*  
 70 an employer to refrain from active employment, with or without \*  
 71 pay, evidenced by appropriate record of the employer and  
 72 promptly transmitted to the association.

73 No change for subd 32 to 33

353\*#017S

74 353.017 EMPLOYEES OF LABOR ORGANIZATIONS.

75 Subdivision 1. QUALIFICATIONS. A former member of

1 the association who is an employee of a labor organization that  
 2 represents public employees who are association members may  
 3 elect pursuant to subdivision 2 to be a coordinated member with  
 4 respect to ~~his~~ service with such labor organization unless \*  
 5 specifically exempt under section 353.01, subdivision 2b.

6 No change for subd 2 to 5

353\*#03S

7 353.03 BOARD OF TRUSTEES.

8 Subdivision 1. MANAGEMENT; COMPOSITION; ELECTION.

9 The management of the public employees retirement fund is vested  
 10 in a board of trustees consisting of the state auditor and eight  
 11 members. The governor shall appoint five trustees to four-year  
 12 terms, one of whom shall be designated to represent school  
 13 boards, one to represent cities, one to represent counties, one  
 14 who shall be a retired annuitant, and one who is a public member  
 15 knowledgeable in pension matters. The membership of the  
 16 association shall elect three trustees for terms of four years.  
 17 Trustees elected by the membership of the association shall be  
 18 public employees and members of the association. For seven days  
 19 beginning November 1 of each year preceding a year in which an  
 20 election is held, the association shall accept at its office  
 21 filings in person or by mail of candidates for the board of  
 22 trustees. A candidate shall submit at the time of filing a  
 23 nominating petition signed by 25 or more members of the fund.  
 24 No name may be withdrawn from nomination by the nominee after  
 25 November 15. At the request of a candidate for an elected  
 26 position on the board of trustees, the board shall mail a  
 27 statement of up to 300 words prepared by the candidate to all  
 28 persons eligible to vote in the election of the candidate. The  
 29 board may adopt policies to govern form and length of these  
 30 statements, timing of mailings, and deadlines for submitting  
 31 materials to be mailed. These policies must be approved by the  
 32 secretary of state. Disputes between the board and a candidate  
 33 concerning application of these policies to a particular  
 34 statement shall be resolved by the secretary of state. A  
 35 candidate who:

36 (a) receives contributions or makes expenditures in excess  
 37 of \$100; or

38 (b) has given implicit or explicit consent for any other  
 39 person to receive contributions or make expenditures in excess  
 40 of \$100;

41 for the purpose of bringing about the candidate's election, must  
 42 file a report with the ethical practices board disclosing the  
 43 source and amount of all contributions to ~~his or her~~ the \*  
 44 candidate's campaign. The ethical practices board shall \*  
 45 prescribe forms governing these disclosures. Expenditures and  
 46 contributions have the meaning defined in section 10A.01. These  
 47 terms do not include the mailing made by the association board  
 48 on behalf of the candidate. A candidate must file a report  
 49 within 30 days from the day that the results of the election are  
 50 announced. The ethical practices board shall maintain these  
 51 reports and make them available for public inspection in the  
 52 same manner as the board maintains and makes available other  
 53 reports filed with it. By January 10 of each year in which  
 54 elections are to be held the board shall distribute by mail to  
 55 the members ballots listing the candidates. No member may vote  
 56 for more than one candidate for each board position to be  
 57 filled. A ballot indicating a vote for more than one person for  
 58 any position shall be void. No special marking may be used on  
 59 the ballot to indicate incumbents. The last day for mailing  
 60 ballots to the fund shall be January 31. Terms expire on  
 61 January 31 of the fourth year, and positions are vacant until  
 62 newly elected members are qualified. The ballot envelopes shall  
 63 be so designed and the ballots shall be counted in such a manner  
 64 as to insure that each vote is secret.

65 The elections shall be supervised by the secretary of  
 66 state. It shall be the duty of the board of trustees to  
 67 faithfully administer the law without prejudice and consistent  
 68 with the expressed intent of the legislature. They shall act as  
 69 trustees with a fiduciary obligation to the state of Minnesota  
 70 which created the fund, the taxpayers of the governmental  
 71 subdivisions which aid in financing it and the public employees  
 72 who are its beneficiaries. They shall act in good faith and  
 73 shall exercise that degree of judgment and care, under  
 74 circumstances then prevailing, which persons of prudence,  
 75 discretion, and intelligence exercise in the management of their

1 own affairs.  
 2 No change for subd 1a to 3  
 3 Subd. 3a. EXECUTIVE DIRECTOR. (a) APPOINTMENT.  
 4 The board shall appoint, with the advice and consent of the  
 5 senate, an executive director on the basis of education,  
 6 experience in the retirement field, and leadership ability. The  
 7 executive director shall have had at least five years'  
 8 experience in an executive level management position, which has  
 9 included responsibility for pensions, deferred compensation, or  
 10 employee benefits. The executive director serves at the  
 11 pleasure of the board. The salary of the executive director is  
 12 as provided by section 15A.081, subdivision 1.

13 (b) DUTIES. The management of the association is  
 14 vested in the executive director who shall be the executive and  
 15 administrative head of the association. ~~He~~ The executive  
 16 director shall act as adviser to the board on all matters  
 17 pertaining to the association; ~~He~~ and shall also act as the  
 18 secretary of the board. The executive director shall:

- 19 (1) attend all meetings of the board;
- 20 (2) prepare and recommend to the board rules for the  
 21 purpose of carrying out the provisions of this chapter;
- 22 (3) establish and maintain an adequate system of records  
 23 and accounts following recognized accounting principles and  
 24 controls;
- 25 (4) designate an assistant director, with the approval of  
 26 the board, who shall serve in the unclassified service and whose  
 27 salary is set in accordance with section 43A.18, subdivision 3,  
 28 appoint a confidential secretary in the unclassified service,  
 29 and appoint employees to carry out this chapter, who are subject  
 30 to chapters 43A and 179A in the same manner as are executive  
 31 branch employees;

32 (5) organize the work of the association as ~~he~~ the director  
 33 deems necessary to fulfill the functions of the association, and  
 34 define the duties of its employees and delegate to them any ~~of~~  
 35 ~~his~~ powers or duties, subject to ~~his~~ the control of, and under  
 36 such conditions as ~~he~~, the executive director may prescribe;

37 (6) with the approval of the board, contract for actuarial  
 38 services, professional management services, and consulting  
 39 services as necessary to fulfill the purposes of this chapter.  
 40 All contracts are subject to chapter 16B. The commissioner of  
 41 administration shall not approve, and the association shall not  
 42 enter into, any contract to provide lobbying services or  
 43 legislative advocacy of any kind. Copies of all professional  
 44 management survey reports shall be sent directly to the  
 45 legislature and the legislative auditor at the same time reports  
 46 are furnished the board. Only management firms experienced in  
 47 conducting management surveys of federal, state or local public  
 48 retirement systems shall be qualified to contract with the  
 49 director hereunder;

50 (7) with the approval of the board provide inservice  
 51 training for all employees of the association;

52 (8) make refunds of accumulated contributions to former  
 53 members and to the designated beneficiary, surviving spouse,  
 54 legal representative or next of kin of deceased members or  
 55 deceased former members, all as provided in this chapter;

56 (9) determine the amount of the annuities and disability  
 57 benefits of members covered by the association and authorize  
 58 payment thereof beginning as of the dates such annuities and  
 59 benefits begin to accrue, all in accordance with the provisions  
 60 of this chapter;

61 (10) pay annuities, refunds, survivor benefits, salaries  
 62 and all necessary operating expenses of the association;

63 (11) prepare and submit to the board and the legislature an  
 64 annual report covering the operation of the association, as  
 65 required by chapter 356;

66 (12) prepare and submit biennial and annual budgets to the  
 67 board for its approval and submit the approved budgets to the  
 68 department of finance for approval by the commissioner; and

69 (13) with the approval of the board, perform such other  
 70 duties as may be required for the administration of the  
 71 association and the other provisions of this chapter and for the  
 72 transaction of its business.

73 Subd. 4. OFFICES. The commissioner of  
 74 administration shall make provision for suitable office space in  
 75 the state capitol or other state office buildings, or at such  
 76 other location in St. Paul as ~~he shall determine~~ is determined

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1 by the commissioner for the use of the board of trustees and its \*  
 2 executive director. The commissioner shall give the board at  
 3 least four months notice for any proposed removal from their  
 4 present location. Any and all rental charges shall be paid by  
 5 the trustees from the public employees retirement fund.

6 No change for subd 5

353\*#05S

7 353.05 CUSTODIAN OF FUNDS.

8 The state treasurer shall be ex officio treasurer of the \*  
 9 retirement funds of the association and ~~his~~ the treasurer's  
 10 general bond to the state shall be so conditioned as to cover \*  
 11 all liability for ~~his~~ acts as treasurer of these funds. All \*  
 12 moneys of the association received by ~~him~~ the treasurer shall be \*  
 13 set aside in the state treasury to the credit of the proper \*  
 14 fund. ~~He~~ The treasurer shall transmit monthly to the executive \*  
 15 director a detailed statement of all amounts so received and  
 16 credited ~~by him~~ to the fund. ~~He shall pay~~ Payments out the fund \*  
 17 shall be made only on warrants issued by the commissioner of \*  
 18 finance, upon abstracts signed by the executive director;  
 19 provided that abstracts for investment may be signed by the  
 20 secretary of the state board of investment.

353\*#14S

21 353.14 BENEFITS FROM OTHER FUNDS.

22 No annuity or benefit provided by this chapter shall be  
 23 affected, diminished, or impaired by any pension, benefit, or  
 24 annuity which any member or ~~his~~ survivor is entitled to receive \*  
 25 from a tax supported public retirement system authorized by any  
 26 other law, for different service for which ~~he~~ the member or \*  
 27 survivor is entitled to receive benefit or annuity from the \*  
 28 public employees retirement association.

353\*#15S

29 353.15 NONASSIGNABILITY AND EXEMPTION OF ANNUITIES AND  
 30 BENEFITS FROM JUDICIAL PROCESS.

31 No money, annuity, or benefit provided for in this chapter  
 32 is assignable or subject to any state estate tax, or to  
 33 execution, levy, attachment, garnishment, or legal process,  
 34 except as provided in section 518.611. Provided, however, the  
 35 association may pay an annuity, benefit or refund to a trust  
 36 company, qualified under chapter 48, that is trustee for a  
 37 person eligible to receive such annuity, benefit or refund.  
 38 Upon the request of a retired, disabled or former member, the  
 39 association may mail the annuity, benefit or refund check to a  
 40 banking institution, savings association or credit union for  
 41 deposit to such person's account or joint account with ~~his~~ a \*  
 42 spouse. The association may prescribe the conditions under  
 43 which such payment will be made. If in the judgment of the  
 44 executive director conditions so warrant, payment may be made to  
 45 a public body in behalf of an annuitant, disabilitant, or  
 46 survivor upon such terms as the executive director may prescribe.

353\*#27S

47 353.27 PUBLIC EMPLOYEES RETIREMENT FUND.

48 No change for subd 1 to 7

49 Subd. 8. DISTRICT COURT REPORTERS; SALARY DEDUCTIONS.

50 Deductions from the salary of a district court reporter in a  
 51 judicial district consisting of two or more counties shall be  
 52 made by the auditor of the county in which the bond and official  
 53 oath of such district court reporter are filed, from the portion  
 54 of ~~his~~ salary paid by such county. \*

55 Subd. 9. FEE OFFICERS; CONTRIBUTIONS; OBLIGATIONS OF  
 56 EMPLOYERS. Any appointed or elected officer of a governmental  
 57 subdivision who was or is a "public employee" within the meaning  
 58 of section 353.01 and was or is a member of the fund and whose  
 59 salary was or is paid in whole or in part from revenue derived  
 60 by fees and assessments, shall pay ~~his~~ employee contribution in \*  
 61 the amount, at the time, and in the manner provided in  
 62 subdivisions 2 and 4. This subdivision shall not apply to  
 63 district court reporters. The employer contribution as provided  
 64 in subdivision 3, and the additional employer contribution as  
 65 provided in subdivision 3a, and section 353.36, subdivision 2a,  
 66 with respect to such service shall be paid by the governmental  
 67 subdivision. This subdivision shall have both retroactive and  
 68 prospective application as to all such members; and every  
 69 employing governmental subdivision is deemed liable,  
 70 retroactively and prospectively, for all employer and additional  
 71 employer contributions for every such member in its employ.  
 72 Delinquencies under this section shall be governed in all

1 respects by section 353.28.

2 No change for subd 10 to 13

353\*#29S

3 353.29 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC  
4 SERVICE.

5 No change for subd 1 to 4

6 Subd. 6. RETIREMENT BEFORE ELIGIBILITY FOR SOCIAL  
7 SECURITY BENEFITS. Any member who retires before ~~he-is~~  
8 becoming eligible for social security retirement benefits may \*  
9 elect to receive a retirement annuity from the association in an \*  
10 amount greater than the annuity computed on the basis of age at  
11 retirement, provided in subdivisions 2 and 3. This option shall  
12 be exercised by making application to the board of trustees.  
13 This greater amount shall be the actuarial equivalent of the  
14 normal retirement annuity computed on the basis of age at  
15 retirement. This greater amount shall be paid until the  
16 annuitant reaches the age of 62, at which time the payment from  
17 the association shall be reduced. The method of computing an  
18 annuity under this subdivision shall be determined by an  
19 approved actuary.

20 Subd. 7. ANNUITIES; ACCRUAL. Except as to elected  
21 public officials, all retirement annuities granted under the  
22 provisions of this chapter shall commence with the first day of  
23 the first calendar month next succeeding the date of termination  
24 of public service and shall be paid in equal monthly  
25 installments, but no payment shall accrue beyond the end of the  
26 month, in which entitlement to such annuity has terminated. If  
27 the annuitant dies prior to negotiating the check for the month  
28 in which death occurs, payment will be made to the surviving  
29 spouse or if none to the designated beneficiary or if none to  
30 the estate. Any annuity granted to an elective public official  
31 shall accrue on the day following expiration of ~~his~~ the public \*  
32 office held or right thereto, and ~~his~~ the annuity for that month \*  
33 shall be prorated accordingly. No annuity, once granted, shall  
34 be increased, decreased, or revoked except as provided in this  
35 chapter. No annuity payment shall be made retroactive for more  
36 than three months prior to that month in which application  
37 therefor shall be filed with the association.

38 No change for subd 8

353\*#30S

39 353.30 ANNUITIES UPON RETIREMENT.

40 No change for subd 1 to 3

41 Subd. 4. Any monthly payments to which any person may be  
42 entitled under this chapter may be reduced in amount upon  
43 application of the person entitled thereto to the association,  
44 provided that such person shall first relinquish in writing all  
45 claim to that part of the full monthly payment which is the  
46 difference between the monthly payment which ~~he~~ that person \*  
47 would be otherwise entitled to receive and the monthly payment \*  
48 which ~~he~~ that person will receive. The reduced monthly payment \*  
49 shall be payment in full of all amounts due under this chapter  
50 for the month for which the payment is made and acceptance of  
51 the reduced monthly payment releases the retirement association  
52 from all obligation to pay to such person the difference between  
53 the amount of the reduced monthly payment and the full amount of  
54 the monthly payment which such person would otherwise have  
55 received. Upon application of the person who is entitled to  
56 such monthly payment, it may be increased prospectively to not  
57 more than the amount to which such person would have been  
58 entitled had ~~he-not~~ no portion thereof been waived ~~any-portion~~ \*  
59 thereof. \*

353\*#32S

60 353.32 REFUNDS AFTER DEATH OF MEMBER OR FORMER MEMBER.

61 Subdivision 1. BEFORE RETIREMENT. If a member or  
62 former member who terminated public service dies before  
63 retirement or before ~~he-has-received~~ receiving any retirement \*  
64 annuity and no other payment of any kind is or may become \*  
65 payable to any person, a refund shall be paid to ~~his~~ the \*  
66 designated beneficiary or, if there be none, to ~~his~~ the \*  
67 surviving spouse, or, if none, to the legal representative \*  
68 of ~~his~~ the decedent's estate. Such refund shall be in an amount \*  
69 equal to ~~his~~ accumulated deductions plus interest thereon at the \*  
70 rate of five percent per annum compounded annually less the sum  
71 of any disability or survivor benefits, if any, that may have  
72 been paid by the fund; provided that a survivor who has a right  
73 to benefits pursuant to section 353.31 may waive such benefits



1 in writing, except such benefits for a dependent child under the  
2 age of 18 years may only be waived pursuant to an order of the  
3 district court.

4 No change for subd 1a

5 Subd. 2. AFTER RETIREMENT. If a former member dies  
6 after retirement and no payment of any kind is or may become  
7 payable to any person, including any deferred benefit or  
8 annuity, there shall be paid to the same succession of payees  
9 set forth in subdivision 1, a refund of his accumulated \*  
10 deductions, less the total payments of all kinds made by the \*  
11 fund to the former member during his the former member's \*  
12 lifetime or to any authorized person after his death, without  
13 interest.

14 Subd. 3. OPTIONAL SURVIVOR ANNUITIES; DESIGNATED  
15 BENEFICIARY. If a former member selected an optional annuity  
16 by the terms of which an optional survivor's annuity was paid to  
17 a survivor after his the former member's death, upon the death \*  
18 of the survivor there shall be paid to the former member's \*  
19 designated beneficiary a refund of his accumulated deductions \*  
20 less the total payments of all kinds made by the fund to the \*  
21 former member during his the former member's lifetime or to any \*  
22 authorized person after his death. If said beneficiary should \*  
23 die before making application for such refund, the same shall be  
24 paid to the legal representative of the estate of the former  
25 member.

26 Subd. 4. LACK, OR DEATH, OF BENEFICIARY. If a  
27 member or former member dies without having designated a  
28 beneficiary or if the beneficiary should die before making  
29 application for refund, and if there is no surviving spouse, and  
30 if the legal representative of such member or former member does  
31 not apply for refund within five years from the date of death of  
32 the member or former member, the accumulated deductions to his \*  
33 the member or former member's credit at the time of death shall \*  
34 be disposed of in the manner provided in section 353.34,  
35 subdivision 5.

36 No change for subd 5

37 Subd. 9. PAYMENT TO A MINOR. If a member or former \*  
38 member dies having named as his beneficiary a person who is a \*  
39 minor at the time of the application for refund, the board may  
40 make payment (a) directly to the minor, (b) to any person who  
41 has legally qualified and is acting as guardian of the minor's  
42 person or property in any jurisdiction, or (c) to either parent  
43 of the minor or to any adult person with whom the minor may at  
44 the time be living, provided only that the parent or other  
45 person to whom any amount is to be paid shall have advised the  
46 board in writing that the amount will be held or used in trust  
47 for the benefit of such minor. Any annuity or disability  
48 benefit payable at the time of death of an annuitant or  
49 recipient of a disability benefit, which is payable to a  
50 beneficiary who is a minor, may be paid in the same manner.  
51 Such payment shall be a bar to recovery by any other person or  
52 persons.

353\*#33S

53 353.33 TOTAL AND PERMANENT DISABILITY BENEFITS.

54 No change for subd 1

55 Subd. 2. APPLICATIONS; ACCRUAL OF BENEFITS. Every  
56 claim or demand for a total and permanent disability benefit  
57 shall be initiated by written application in the manner and form  
58 prescribed by the executive director, filed in the office of the  
59 retirement association, showing compliance with the statutory  
60 conditions qualifying the applicant for a total and permanent  
61 disability benefit. A member or former member who became \*  
62 totally and permanently disabled during his a period of \*  
63 membership may file his application for total and permanent \*  
64 disability benefits within three years next following  
65 termination of public service, but not thereafter. This benefit  
66 shall begin to accrue the day following the commencement of  
67 disability, 90 days preceding the filing of the application, or,  
68 if annual or sick leave is paid for more than the said 90 day  
69 period, from the date salary ceased whichever is later. No  
70 payment shall accrue beyond the end of the month in which  
71 entitlement has terminated. If the disabilitant dies prior to  
72 negotiating the check for the month in which death occurs,  
73 payment will be made to the surviving spouse, or if none, to the  
74 designated beneficiary, or if none, to the estate.  
75 No change for subd 3 to 3a

1 Subd. 4. PROCEDURE TO DETERMINE ELIGIBILITY. The  
 2 applicant shall provide medical evidence to support the  
 3 application for total and permanent disability. The medical  
 4 advisor shall verify the medical evidence and, if necessary for  
 5 disability determination, suggest referral of applicant to  
 6 specialized medical consultants. The association shall also  
 7 obtain from the employer, certification of the member's past  
 8 public service, dates of paid sick leave and vacation beyond ~~his~~  
 9 the last working day and whether or not sick leave or annual  
 10 leave has been allowed. If upon consideration of the medical  
 11 reports received and the recommendations of the medical advisor,  
 12 it is determined that the applicant is totally and permanently  
 13 disabled within the meaning of the law, the association shall  
 14 grant the person a disability benefit. The fact that an  
 15 employee is placed on leave of absence without compensation  
 16 because of disability shall not bar the person from receiving a  
 17 disability benefit.

18 No change for subd 5 to 6

19 Subd. 6a. MEDICAL ADVISER. The state commissioner  
 20 of health or such other licensed physician on the staff of the  
 21 state commissioner of health as ~~he~~ the commissioner may  
 22 designate shall be the medical adviser of the executive director.

23 Subd. 6b. DUTIES OF THE MEDICAL ADVISER. The  
 24 medical adviser shall designate licensed physicians to examine  
 25 applicants for disability benefits. The medical adviser shall  
 26 pass upon all medical reports based upon such examinations  
 27 required to determine whether applicants are totally and  
 28 permanently disabled as defined in section 353.01, subdivision  
 29 19, or disabled as defined in section 353.656, ~~and~~ shall  
 30 investigate all health and medical statements and certificates  
 31 by or on behalf of said applicants in connection with disability  
 32 benefits, and shall report in writing to the executive director,  
 33 ~~his~~ conclusions and recommendations on all matters referred ~~to~~  
 34 him for advice.

35 Subd. 7. PARTIAL RE-EMPLOYMENT. Should such  
 36 disabled person resume a gainful occupation ~~and his~~ from which  
 37 earnings are less than ~~his~~ the salary at the date of disability  
 38 or the salary currently paid for similar positions, the board  
 39 shall continue the disability benefit in an amount which when  
 40 added to such earnings does not exceed ~~his~~ the salary at the  
 41 date of disability or the salary currently paid for similar  
 42 positions, whichever is higher, provided the disability benefit  
 43 in such case does not exceed the disability benefit originally  
 44 allowed. No deductions for the retirement fund shall be taken  
 45 from the salary of a disabled person who is receiving a  
 46 disability benefit as provided in this subdivision.

47 No change for subd 8

48 Subd. 9. RETURN TO PUBLIC SERVICE. Any person  
 49 receiving a disability benefit who is restored to active public  
 50 service except persons receiving benefits as provided in  
 51 subdivision 7, shall have deductions taken for the retirement  
 52 fund and upon subsequent retirement have ~~his~~ the retirement  
 53 annuity payable based upon all allowable service including that  
 54 upon which the disability benefits were based.

55 Subd. 10. Repealed, 1973 c 753 s 85

56 No change for subd 11

353\*#34S

57 353.34 TERMINATION OF PUBLIC SERVICE.

58 Subdivision 1. REFUND OR DEFERRED ANNUITY. Any  
 59 member who ceases to be a public employee by reason of  
 60 termination of public service, or who is on a continuous layoff  
 61 for more than 120 calendar days, shall be entitled to a refund  
 62 of ~~his~~ accumulated deductions as provided in subdivision 2, or  
 63 to a deferred annuity as provided in subdivision 3. Application  
 64 for a refund may not be made prior to date of termination of  
 65 public service, or the expiration of 120 days of layoff, and a  
 66 refund shall be paid within 120 days following receipt of  
 67 application, provided applicant has not again become a public  
 68 employee required to be covered by the association.

69 Subd. 2. REFUND WITH INTEREST. Except as provided in  
 70 subdivision 1, any person who ceases to be a public employee  
 71 shall receive a refund in an amount equal to ~~his~~ accumulated  
 72 deductions with interest to the first day of the month in which  
 73 the refund is processed at the rate of five percent per annum  
 74 compounded annually based on fiscal year balances.

75 Subd. 3. DEFERRED ANNUITY; ELIGIBILITY; COMPUTATION.

1 Any person with at least ten years of allowable service when  
 2 termination of public service occurs ~~may-at-his-option-leave-his~~ \*  
 3 shall have the option of leaving the accumulated deductions in \*  
 4 the fund and thereby be entitled to a deferred retirement  
 5 annuity commencing at age 65 or for a deferred early retirement  
 6 annuity pursuant to section 353.30, subdivisions 1, 1a, 1b or  
 7 1c. The deferred annuity shall be computed in the manner  
 8 provided in section 353.29, subdivisions 2 and 3, on the basis  
 9 of the law in effect on the date of termination of public  
 10 service and shall be augmented as provided in section 353.71,  
 11 subdivision 2. Any person qualified to apply for a deferred  
 12 retirement annuity may revoke this option at any time prior to  
 13 the commencement of deferred annuity payments by making  
 14 application for a refund. The person shall be entitled to a  
 15 refund of accumulated member contributions within 30 days  
 16 following date of receipt of the application by the executive  
 17 director.

18 No change for subd 3a  
 19 Subd. 3b. DEFERRED ANNUITY; CERTAIN FORMER MUNICIPAL  
 20 COURT JUDGES. Any person who qualified for membership in the  
 21 association solely because of service as a municipal court  
 22 judge, whose service as a municipal court judge was terminated  
 23 by Laws 1971, chapter 951, section 9, and who elected to leave  
 24 ~~his-or-her~~ accumulated deductions in the fund to qualify for a \*  
 25 deferred annuity, may receive a deferred early retirement  
 26 annuity under section 353.30, subdivision 1, 1a, 1b, or 1c,  
 27 notwithstanding the law in effect on the date of ~~his-or-her~~ \*  
 28 termination of public service.

29 Subd. 4. Repealed, 1971 c 106 s 40  
 30 No change for subd 5 to 6

353\*#35S  
 31 353.35 CONSEQUENCES OF REFUND; REPAYMENT, RIGHTS  
 32 RESTORED.  
 33 When any former member accepts a refund all existing  
 34 service credits and all rights and benefits to which the person  
 35 was entitled prior to the acceptance of such refund shall  
 36 terminate and shall not again be restored until the person  
 37 acquires not less than 18 months allowable service credit  
 38 subsequent to taking ~~his~~ the last refund and repays all refunds \*  
 39 taken and interest received under section 353.34, subdivisions 1  
 40 and 2, plus interest at six percent per annum compounded  
 41 annually. If more than one refund has been taken, all refunds  
 42 must be repaid by the person with interest at six percent per  
 43 annum compounded annually. All refunds must be repaid within  
 44 three months of the last date of termination of public service.

353\*#656S  
 45 353.656 DISABILITY BENEFITS.  
 46 Subdivision 1. IN LINE OF DUTY; COMPUTATION OF  
 47 BENEFITS. Any member of the police and fire fund less than 55  
 48 years of age, who shall become disabled and physically unfit to  
 49 perform ~~his~~ duties as a police officer or fire fighter \*  
 50 subsequent to June 30, 1973, as a direct result of an injury,  
 51 sickness, or other disability incurred in or arising out of any  
 52 act of duty, which shall render ~~him~~ the member physically or \*  
 53 mentally unable to perform ~~his~~ duties as a police officer or \*  
 54 fire fighter, shall receive disability benefits during the  
 55 period of such disability. The benefits shall be in an amount  
 56 equal to 50 percent of the "average salary" pursuant to  
 57 subdivision 3 plus an additional 2-1/2 percent of said average  
 58 salary for each year of service in excess of 20 years but not  
 59 exceeding 25 years and two percent for each year thereafter.  
 60 Should disability under this subdivision occur before the member  
 61 has at least five years of allowable service credit in the  
 62 police and fire fund, the disability benefit shall be computed  
 63 on the "average salary" from which deductions were made for  
 64 contribution to the police and fire fund.

65 No change for subd 1a to 2  
 66 Subd. 3. After June 30, 1973, any member who becomes  
 67 disabled after not less than five years of allowable service,  
 68 before reaching the age of 55, because of sickness or injury  
 69 occurring while not on duty as a police officer or fire fighter,  
 70 and by reason thereof the member is unable to perform ~~his~~ duties \*  
 71 as a police officer or fire fighter, shall be entitled to \*  
 72 receive a disability benefit. The benefit shall be in the same  
 73 amount and paid in the same manner as if the member were 55  
 74 years of age at the date of ~~his~~ disability and the benefit were \*

1 paid pursuant to section 353.651. Should disability under this  
2 clause occur after five but in less than ten years allowable  
3 service, the disability benefit shall be the same as though the  
4 member had at least ten years service.

5 Subd. 4. No member shall receive any disability benefit  
6 payment when there remains to ~~his~~ the member's credit unused \*  
7 annual leave or sick leave or under any other circumstances,  
8 when during the period of disability there has been no \*  
9 impairment of ~~his~~ salary and should such member resume a gainful \*  
10 occupation ~~and his~~ with earnings are less than ~~his~~ the salary \*  
11 earned at the date of disability or the salary currently paid \*  
12 for similar positions, the association shall continue the \*  
13 disability benefit in an amount which when added to such \*  
14 earnings does not exceed ~~his~~ the salary earned at the date of \*  
15 disability or the salary currently paid for similar positions,  
16 whichever is higher, provided the disability benefit in such  
17 case does not exceed the disability benefit originally allowed.

18 No change for subd 5 to 6

353\*#657S

19 353.657 SURVIVOR BENEFITS.

20 Subdivision 1. In the event any member of the police and  
21 fire fund shall die from any cause, the association shall grant  
22 survivor benefits to any surviving spouse who was residing with  
23 ~~him~~ the member at the time of ~~his~~ death and who was married to \*  
24 ~~him~~ the member for a period of at least one year, and to a \*  
25 dependent child or children, unmarried and under the age of 18  
26 years. The spouse and child or children shall be entitled to  
27 monthly benefits as provided in the following subdivisions.

28 No change for subd 2 to 3

29 Subd. 4. If the member shall die under circumstances which \*  
30 entitle ~~his~~ a surviving spouse and dependent children to receive \*  
31 benefits under the workers' compensation law, the amounts so  
32 received by them shall not be deducted from the benefits payable  
33 under this section.

353\*#67S

34 353.67 APPLICATION FOR ANNUITY.

35 Application for retirement annuity may be made by a member  
36 or by someone authorized to act in ~~his~~ behalf of the member. \*

353\*#69S

37 353.69 OFFICERS OR EMPLOYEES OF NONCOVERED  
38 MUNICIPALITIES; OPTIONAL MEMBERSHIP.

39 Any former member who is an elected official or an employee  
40 of a municipality not covered by the public employees retirement  
41 association, has the option to continue ~~his~~ membership in the \*  
42 association for any period of service with the municipality.  
43 Except for the repayment of refunds pursuant to section 353.35,  
44 this option applies to future service only. Any person desiring  
45 to exercise this option shall file application with the  
46 association. No such person shall be entitled to allowable  
47 service credit under this chapter, if for the same period of  
48 service ~~he~~ that person receives credit with any other public \*  
49 retirement or pension plan maintained by the municipality.

353\*#74S

50 353.74 CERTAIN SURVIVOR BENEFITS.

51 The surviving spouse of a former member of the public  
52 employees retirement association for not less than 18 years who  
53 was separated from the association by becoming a member of the  
54 judicial branch of the state government shall receive the same  
55 benefits as if the former member was a member of the public  
56 employees retirement association on the date of ~~his~~ death. This \*  
57 section shall only apply when neither the former member nor ~~his~~ \*  
58 a survivor have received any refundment of the accumulated \*  
59 salary deduction of the former member.

353\*#75S

60 353.75 CERTAIN RETIREMENT ANNUITY BENEFITS.

61 Any public employee who retired on or after December 31,  
62 1964, and who (1) has attained the age of 65 years, and who (2)  
63 had more than 22 years of continuous service in ~~his~~ that \*  
64 employee's first public employment, (3) had more than five years \*  
65 of subsequent continuous service in public employment before ~~his~~ \*  
66 retirement, (4) and has made contributions to the public  
67 employees retirement fund during all ~~his~~ public employment, and \*  
68 who (5) has not withdrawn any ~~of his~~ contributions to the public \*  
69 employees retirement fund, is entitled to receive a retirement \*  
70 annuity from May 14, 1965, based upon the sum total of such  
71 periods of public employment in like manner as if ~~his~~ the public \*

1 employment had been continuous.

353\*#83S

2 353.83 ADDITIONAL PAYMENTS TO CERTAIN ANNUITANTS.

3 Payments of retirement annuities pursuant to this chapter,  
 4 to annuitants who (a) retired prior to July 1, 1962, (b) had at  
 5 least 20 years of allowable service credit in the public  
 6 employees retirement association upon their termination of  
 7 public employment, and (c) receive annuities of less than \$200  
 8 per month shall, retroactive to July 1, 1967, be supplemented by  
 9 additional payments by the public employees retirement  
 10 association from moneys in the general fund of the state of  
 11 Minnesota in the amount of \$15 per month, provided that such  
 12 annuitants have not previously qualified for the additional  
 13 payments pursuant to this section, and provided further that in  
 14 no case shall the annuities plus the additional payments exceed  
 15 \$200 per month. These additional payments shall be made in the  
 16 same manner and at the same time retirement annuities are paid  
 17 and shall be included in the warrants on which the annuities are  
 18 so paid. The supplemental payment herein provided shall be  
 19 excluded from the computation of any monthly survivor benefit or  
 20 optional annuity which may become due and payable to any person  
 21 following the death of an annuitant who, during ~~his-lifetime~~  
 22 life, received a benefit pursuant to this section. If an \*  
 23 annuitant entitled to receive additional payment under this \*  
 24 section should die before such retroactive payment is received, \*  
 25 payment shall be made upon demand to ~~his~~ the designated \*  
 26 beneficiary in an amount equal to ~~his~~ the accumulated benefit \*  
 27 from July 1, 1967, to the date of ~~his~~ death, without interest. \*

354\*#05S

28 354.05 DEFINITIONS.

29 No change for subd 1 to 7

30 Subd. 8. DEPENDENT CHILD. "Dependent child" means  
 31 any natural or adopted child of a deceased member who has not  
 32 reached the age of 18, or who is under age 22 and is a full time  
 33 student throughout the normal school year, unmarried and  
 34 dependent for more than one-half of ~~his~~ support upon such member \*  
 35 and for a period of at least 90 days prior to the member's \*  
 36 death. It also includes any child of the member conceived \*  
 37 ~~during-his-lifetime~~ while living and born after ~~his~~ death. \*

38 No change for subd 9 to 10

39 Subd. 11. ACCUMULATED DEDUCTIONS. "Accumulated  
 40 deductions" means the total of the sums deducted from the salary  
 41 of a member and the total amount of assessments paid by a member  
 42 in lieu of such deductions, credited to ~~his~~ the member's \*  
 43 individual fund, less amounts paid to the member or any person \*  
 44 in ~~his~~ the member's behalf in the form of refundments, annuity \*  
 45 payments or benefit payments and less any other amounts deducted  
 46 pursuant to law.

47 No change for subd 12

48 Subd. 13. ALLOWABLE SERVICE. "Allowable service"  
49 means:

50 (1) Any service rendered by a teacher for which on or  
 51 before July 1, 1957, ~~he-received-credit-to-his~~ the teacher's \*  
 52 account in the retirement fund was credited by reason of \*  
 53 employee contributions in the form of salary deductions,  
 54 payments in lieu of salary deductions, or in any other manner  
 55 authorized by Minnesota Statutes 1953, Sections 135.01 to  
 56 135.13, as amended by Laws 1955, Chapters 361, 549, 550, 611 or

57 (2) Any service rendered by a teacher for which on or  
 58 before July 1, 1961, ~~he~~ the teacher elected to obtain credit for \*  
 59 service by making payments to the fund pursuant to Minnesota \*  
 60 Statutes 1980, Section 354.09 and section 354.51 or

61 (3) Any service rendered by a teacher after July 1, 1957,  
 62 for any calendar month when the member receives salary from  
 63 which deductions are made, deposited and credited in the fund,  
 64 or

65 (4) Any service rendered by a person after July 1, 1957,  
 66 for any calendar month where payments in lieu of salary  
 67 deductions are made, deposited and credited into the fund as  
 68 provided in Minnesota Statutes 1980, Section 354.09, Subdivision  
 69 4, and section 354.53, or

70 (5) Any service rendered by a teacher for which ~~he~~ the \*  
 71 teacher elected to obtain credit for service by making payments \*  
 72 to the fund pursuant to Minnesota Statutes 1980, Section 354.09,  
 73 Subdivisions 1 and 4, sections 354.50, 354.51, Minnesota  
 74 Statutes 1957, Section 135.41, Subdivision 4, Minnesota Statutes

1 1971, Section 354.09, Subdivision 2, or Minnesota Statutes, 1973  
2 Supplement, Section 354.09, Subdivision 3, or

3 (6) Both service during years of actual membership in the  
4 course of which contributions were currently made and service in  
5 years during which the teacher was not a member but for which ~~he~~  
6 the teacher later elected to obtain credit by making payments to  
7 the fund as permitted by any law then in effect, or

8 (7) Any service rendered where contributions were made and  
9 no allowable service credit was established because of the  
10 limitations contained in Minnesota Statutes 1967, Section  
11 354.09, Subdivision 2, and Minnesota Statutes 1957, Section  
12 135.09, Subdivision 2, as determined by the ratio between the  
13 amounts of money credited to ~~his~~ the teacher's account in a  
14 fiscal year and the maximum retirement contribution allowable  
15 for that year. For purposes of this subdivision, the maximum  
16 contributions allowable after July 1, 1967, shall be defined as  
17 the maximum in effect immediately prior to that date.

18 No change for subd 14 to 20

19 Subd. 21. RETIREMENT. "Retirement" means the  
20 withdrawal of a member from active teaching service who is paid  
21 a retirement annuity thereafter and commences with the date  
22 designated by the retirement board when the retirement annuity  
23 shall first accrue to the former member after ~~his~~ withdrawal  
24 from active teaching service. This date shall determine any  
25 rights specified in this chapter which occur either before or  
26 after retirement, as the case may be.

27 Subd. 22. DESIGNATED BENEFICIARY. "Designated  
28 beneficiary" means the person designated by a member to receive  
29 the balance of ~~his~~ the member's accumulated deductions after  
30 death. If the member had failed to designate such a person or  
31 if the person designated predeceased the member, beneficiary in  
32 such cases means the estate of the deceased member.

33 No change for subd 23 to 24

34 Subd. 25. FORMULA SERVICE CREDIT. "Formula service  
35 credit" means any allowable service credit as defined in  
36 subdivision 13 except:

37 (1) Any service rendered prior to July 1, 1951, for which  
38 payments were made pursuant to subdivision 13 except as provided  
39 in section 354.09, subdivision 4, as determined by multiplying  
40 the number of years of service established in the records of the  
41 teachers retirement fund as of July 1, 1961 by the ratio  
42 obtained between the total amount paid and the maximum amount  
43 payable for those years;

44 (2) Any service rendered prior to July 1, 1957 for which  
45 payments were made pursuant to section 354.09, subdivision 4, as  
46 determined by multiplying the number of years of service  
47 established in the records of the teachers retirement fund by  
48 the ratio obtained between the total amount paid and the maximum  
49 amount payable for those years; or

50 (3) Any service rendered for which contributions were not  
51 made in full as determined by the ratio between the amounts of  
52 money credited to ~~his~~ the teacher's account in a fiscal year and  
53 the retirement contribution payable for the fiscal year pursuant  
54 to sections 354.092, 354.42 and 354.51; and

55 (4) No period of service shall be counted more than once  
56 for purposes of this subdivision.

57 No change for subd 26 to 36

354\*#06S

58 354.06 BOARD OF TRUSTEES; MEMBERSHIP; DUTIES.

59 No change for subd 1 to 2

60 Subd. 2a. The management of the association is vested in  
61 the executive director who shall be the executive and  
62 administrative head of the association. ~~He~~ The executive  
63 director shall act as advisor to the board on all matters  
64 pertaining to the association; ~~He~~ and shall also act as the  
65 secretary of the board. ~~It is the duty of~~ The executive  
66 director ~~and he has the power to~~ shall:

67 (1) Attend all meetings of the board;

68 (2) Prepare and recommend to the board rules for the  
69 purpose of carrying out the provisions of this chapter;

70 (3) Establish and maintain an adequate system of records  
71 and accounts following recognized accounting principles and  
72 controls;

73 (4) Designate an assistant executive director in the  
74 unclassified service and two assistant executive directors in  
75 the classified service with the approval of the board, and

1 appoint such employees, both permanent and temporary, as are  
2 necessary to carry out the provisions of said chapter;

3 (5) Organize the work of the association as he the director \*  
4 deems necessary to fulfill the functions of the association, and \*  
5 define the duties of its employees and delegate to them any of \*  
6 ~~his~~ powers or duties, subject to ~~his~~ the director's control and \*  
7 under such conditions as he the director may prescribe; \*

8 (6) With the approval of the board, contract for actuarial  
9 services, professional management services, and consulting  
10 services as may be necessary and fix the compensation therefor.  
11 Such contracts shall not be subject to the competitive bidding  
12 procedure prescribed by chapter 16. Professional management  
13 services may not be contracted for more often than once in every  
14 six years. Copies of all professional management survey reports  
15 shall be sent directly to the legislature and the legislative  
16 auditor at the same time reports are furnished the board. Only  
17 management firms experienced in conducting management surveys of  
18 federal, state or local public retirement systems shall be  
19 qualified to contract with the director hereunder;

20 (7) With the approval of the board provide inservice  
21 training for all employees of the association;

22 (8) Make refunds of accumulated contributions to former  
23 members and to the designated beneficiary, surviving spouse,  
24 legal representative or next of kin of deceased members or  
25 deceased former members, all as provided in this chapter;

26 (9) Determine the amount of the annuities and disability  
27 benefits of members covered by the association and authorize  
28 payment thereof beginning as of the dates such annuities and  
29 benefits begin to accrue, all in accordance with the provisions  
30 of said chapter;

31 (10) Pay annuities, refundments, survivor benefits,  
32 salaries and all necessary operating expenses of the association;

33 (11) Prepare and submit to the board and the legislature an  
34 annual report covering the operation of the association, as  
35 required by chapter 356;

36 (12) Certify funds available for investment to the state  
37 board of investment;

38 (13) With the advice and approval of the board request the  
39 state board of investment to sell securities ~~when-he-determines~~ \*  
40 on determining that funds are needed for the purposes of the \*  
41 association;

42 (14) Prepare and submit biennial and annual budgets to the  
43 board and with the approval of the board submit such budgets to  
44 the department of administration; and

45 (15) With the approval of the board, perform such other  
46 duties as may be required for the administration of the  
47 association and the other provisions of this chapter and for the  
48 transaction of its business.

49 Subd. 3. The state treasurer shall be ex officio treasurer  
50 of the fund and ~~his~~ the treasurer's general bond to the state \*  
51 shall cover any liabilities for ~~his~~ acts as treasurer of the \*  
52 fund. ~~He~~ The state treasurer shall receive all moneys payable \*  
53 to the fund and pay out the same only on warrants issued by the  
54 commissioner of finance upon forms signed by the executive  
55 director.

56 No change for subd 4 to 7

354\*#092S

57 354.092 SABBATICAL LEAVE.

58 ~~If~~ A member who is granted a sabbatical leave, ~~he~~ may \*  
59 receive allowable service credit not exceeding three years in  
60 any ten consecutive years toward a retirement annuity by paying  
61 into the fund employee contributions during the period of  
62 leave. The employee contribution shall be based upon the  
63 appropriate rate of contributions and the salary received during  
64 the year immediately preceding the leave. This payment shall be  
65 made by the end of the fiscal year following the fiscal year in  
66 which the leave of absence terminated, and shall be without  
67 interest. A member shall not accrue more than three years  
68 allowable service by reason of this section unless the allowable  
69 service credit was paid for by the member prior to July 1,  
70 1962. A sabbatical leave for the purpose of this section shall  
71 be compensated by a minimum of one-third of the salary the  
72 member received for a comparable period during the prior fiscal  
73 year. If the employee contributions during the period of the  
74 leave are less than the contributions based on the salary  
75 received during the year immediately preceding the leave, the

1 formula service credit of the member shall be prorated according  
 2 to section 354.05, subdivision 25, clause (3), except that if  
 3 the member is paid full salary for any sabbatical leave of  
 4 absence, either past or prospective, the formula service credit  
 5 shall not be prorated. For sabbatical leaves taken after June  
 6 30, 1986, the required employer contribution, including the  
 7 amortization amount specified in section 354.42, subdivisions 3  
 8 and 5, shall be paid by the employing unit within 30 days after  
 9 notification by the association of the amount due.

354\*#094S

10 354.094 EXTENDED LEAVES OF ABSENCE.

11 No change for subd 1 to 1b

12 Subd. 2. MEMBERSHIP; RETENTION. Notwithstanding  
 13 section 354.49, subdivision 4, clause (3), a member on extended  
 14 leave whose employee and employer contributions are paid into  
 15 the fund pursuant to subdivisions 1 and 1a shall retain  
 16 membership in the association for as long as the contributions  
 17 are paid, under the same terms and conditions as if ~~he~~ the  
 18 member had continued to teach in the district, the community \*  
 19 college system or the state university system. \*

20 Subd. 3. EFFECT OF NONPAYMENT. A member on extended  
 21 leave of absence pursuant to section 125.60 or 136.88 who does  
 22 not pay employee contributions or whose employer contribution is  
 23 not paid into the fund in any year shall be deemed to cease to  
 24 render teaching services beginning in that year for purposes of  
 25 this chapter and may not pay employee or employer contributions  
 26 into the fund in any subsequent year of the leave. Nonpayment  
 27 of contributions into the fund shall not affect the rights or  
 28 obligations of the member or ~~his~~ the member's employer under \*  
 29 section 125.60 or 136.88. \*

30 Subd. 4. ~~If~~ A member who pays employee contributions into \*  
 31 the fund for the agreed maximum duration of an extended leave \*  
 32 and who does not resume teaching in the first school year after \*  
 33 that maximum duration has elapsed, ~~he~~ shall be deemed to cease \*  
 34 to render teaching services beginning in that year for purposes \*  
 35 of this chapter. \*

36 Subd. 5. The provisions of this section shall not apply to \*  
 37 a member who is discharged or placed on unrequested leave of \*  
 38 absence or retrenchment or lay-off or whose contract is \*  
 39 terminated while ~~he~~ the member is on an extended leave of \*  
 40 absence pursuant to section 125.60 or 136.88. \*

41 Subd. 6. A member who pays employee contributions and \*  
 42 receives allowable service credit in the fund pursuant to this \*  
 43 section may not pay employee contributions or receive allowable \*  
 44 service credit for the same fiscal year in any other Minnesota \*  
 45 public employee pension plan, except a volunteer firefighters' \*  
 46 relief association governed by sections 69.771 to 69.776. This \*  
 47 subdivision shall not be construed to prohibit a member who pays \*  
 48 employee contributions and receives allowable service credit in \*  
 49 the fund pursuant to this section in any year from being \*  
 50 employed as a substitute teacher by any school district during \*  
 51 that year. Notwithstanding the provisions of sections 354.091 \*  
 52 and 354.42, a teacher may not pay retirement contributions or \*  
 53 receive allowable service credit in the fund for teaching \*  
 54 service rendered for any part of any year for which ~~he~~ the \*  
 55 teacher pays retirement contributions or receives allowable \*  
 56 service credit pursuant to this section or section 354A.091 \*  
 57 while on an extended leave of absence pursuant to section 125.60. \*

354\*#10S

58 354.10 FUND NOT SUBJECT TO ASSIGNMENT OR PROCESS;  
59 BENEFICIARIES.

60 The right of a teacher to ~~avail-himself~~ take advantage of \*  
 61 the benefits provided by this chapter, is a personal right only \*  
 62 and shall not be assignable. All moneys to the credit of a \*  
 63 teacher's account in the fund or any moneys payable to ~~him~~ the \*  
 64 teacher from the fund shall belong to the state of Minnesota \*  
 65 until actually paid to the teacher or ~~his~~ a beneficiary pursuant \*  
 66 to the provisions of this chapter. Any power of attorney, \*  
 67 assignment or attempted assignment of a teacher's interest in \*  
 68 the fund, or of the beneficiary's interest therein, by a teacher \*  
 69 or ~~his~~ a beneficiary, shall be null and void and the same shall \*  
 70 be exempt from taxation under chapter 291 and from garnishment \*  
 71 or levy under attachment or execution, except as provided in \*  
 72 section 518.611. Provided however, the board may pay an annuity \*  
 73 or benefit to a banking institution, qualified under chapter 48,  
 74 that is a trustee for a person eligible to receive such annuity



1 or benefit. Upon completion of the proper forms as provided by  
 2 the board, the annuity or benefit check may be mailed to a  
 3 banking institution, savings association or credit union for  
 4 deposit to the recipient's individual account or joint account  
 5 with ~~his-or-her~~ a spouse. The board shall prescribe the \*  
 6 conditions which shall govern these procedures. If in the  
 7 judgment of the executive director conditions so warrant,  
 8 payment may be made to a public body in behalf of an annuitant,  
 9 disabilitant, or survivor upon such terms as the executive  
 10 director may prescribe. Any beneficiary designated by a teacher  
 11 under the terms of this chapter, may be changed or revoked by \*  
 12 the teacher at ~~his~~ pleasure, in such manner as the board may \*  
 13 prescribe. In case a designated beneficiary dies before the \*  
 14 teacher designating ~~him~~ the beneficiary dies, and a new  
 15 beneficiary is not designated, the teacher's estate shall be the  
 16 beneficiary.

354\*#146S

17 354.146 RETIREMENT PROGRAMS.

18 Subdivision 1. Every member who has rendered teaching  
 19 service or was on an authorized leave of absence after June 30,  
 20 1972 is covered by the full formula program except that those  
 21 members who have contributed to the variable annuity fund are  
 22 covered by the combined formula and variable annuity  
 23 program. The benefit of a former member who does not return to \*  
 24 teaching service prior to retirement shall have-his-benefit be \*  
 25 determined under the program in effect at the time of  
 26 termination.

27 Subd. 2. If a member had previously elected the total  
 28 variable annuity program, a portion of ~~his~~ the variable annuity \*  
 29 account accumulations will be transferred to ~~his~~ the formula \*  
 30 account and become a part of ~~his~~ the member's accumulated \*  
 31 deductions. An equal amount of state contributions shall be  
 32 transferred from the variable annuity fund to the teachers  
 33 retirement fund. Such transfers shall be in an amount equal to  
 34 four-sevenths of the value of the member's variable annuity  
 35 account as of June 30, 1974, except that only one-half of the  
 36 contributions made during the fiscal year ending June 30, 1974  
 37 shall be transferred.

38 No change for subd 3

354\*#33S

39 354.33 COMPUTATION OF RETIREMENT ANNUITIES.

40 Subd. 5. Notwithstanding the provisions of section 354.55,  
 41 subdivision 3, when any person retires after July 1, 1973 who  
 42 (a) has ten or more years of allowable service, and (b) does not  
 43 have any retroactive social security coverage by reason of ~~his~~ \*  
 44 the person's position in the retirement system, and (c) does not \*  
 45 qualify for old age and survivor primary benefits at the time of  
 46 retirement, the annuity shall be computed under section 354.44,  
 47 subdivision 2 of the law in effect on June 30, 1969, except that  
 48 accumulations after June 30, 1957, shall be calculated using the  
 49 same mortality table and interest assumption used to transfer  
 50 the required reserves to the Minnesota post-retirement  
 51 investment fund.

52 Subd. 6. When any person retires and whose annuity is  
 53 computed as a coordinated member as a result of (1) ~~his-transfer~~ \*  
 54 transferring from public school teaching to state university \*  
 55 teaching, and/or; (2) not rendering teaching service within a \*  
 56 fiscal year; shall have ~~his~~ the annuity computed as a basic \*  
 57 member for such service formerly accrued as a basic member.

58 Subd. 7. Repealed, 1974 c 289 s 59

59 Subd. 8. Repealed, 1974 c 289 s 59

60 Subd. 9. Repealed, 1974 c 289 s 59

354\*#35S

61 354.35 RETIREMENT BEFORE BECOMING ELIGIBLE FOR SOCIAL  
62 SECURITY.

63 Any coordinated member who retires before ~~he-is-eligible~~ \*  
 64 becoming eligible for social security retirement benefits, may \*  
 65 elect to receive retirement benefits from the association in an \*  
 66 amount greater than ~~his~~ the member's annuity computed on the \*  
 67 basis of ~~his~~ the member's age ~~when-he-retires at~~ \*  
 68 retirement. He The member shall exercise this option by making \*  
 69 an application to the board on a form provided by the board.  
 70 This greater amount shall be the actuarial equivalent of the  
 71 member's annuity computed on the basis of ~~his~~ the member's age \*  
 72 when-he-retires at retirement. The greater amount shall be paid \*  
 73 until the member reaches the age of 65 at which time the payment

1 from the association shall be reduced. These annuities provided  
2 in this section shall be computed by an approved actuary.

354\*#41S

3 354.41 TEACHERS RETIREMENT ASSOCIATION, ELIGIBILITY FOR  
4 MEMBERSHIP.

5 No change for subd 2

6 Subd. 3. (1) Each annuitant, age 60 or over, who is  
7 drawing an annuity pursuant to Minnesota Statutes 1953, Section  
8 135.10 and Minnesota Statutes 1965, Sections 354.44 and 354.33  
9 shall have the right to have ~~his~~ membership in the fund restored \*  
10 upon resumption of teaching service, for the purpose of having  
11 deductions made in accordance with sections 354.42 and 355.48.  
12 Upon completion of five years of allowable service, under this  
13 subdivision the member shall be entitled to a coordinated  
14 annuity provided in section 354.44, subdivision 6. This annuity  
15 is in addition to any annuity previously granted under this  
16 chapter.

17 (2) Any annuitant qualifying for membership in the fund  
18 under clause (1) may file a written notice with the executive  
19 director of the teachers retirement association requesting that  
20 deductions provided for in section 354.42 be made from  
21 compensation paid for subsequent teaching services. Such notice  
22 shall remain in effect until the annuitant requests in writing  
23 that this membership be revoked. After July 1, 1967, deductions  
24 pursuant to section 355.48 are required for any annuitant  
25 eligible for membership in the fund under clause (1). Teaching  
26 service rendered by an annuitant for which no deductions were  
27 made pursuant to section 354.42, shall not be included in any  
28 additional annuity granted pursuant to clause (1) of this  
29 subdivision.

30 (3) Teachers retirement deductions made prior to July 1,  
31 1973 from the salary of any annuitant who was qualified for  
32 membership in the fund under clause (1) of this subdivision at  
33 the time such deductions were made, shall be applicable to the  
34 computation of an annuity as provided under clause (1) of this  
35 subdivision even if the written notice required in clause (2) of  
36 this subdivision has not been filed. The teaching service  
37 related to such retirement deductions shall be deemed to be  
38 allowable service credit which is applicable to the completion  
39 of the five years of allowable service required in clause (2) of  
40 this subdivision.

41 Subd. 4. Any person who is a former member and is  
42 presently employed by the Minnesota federation of teachers or  
43 its affiliated branches within the state, the Minnesota  
44 education association, the Minnesota association of school  
45 principals, the Minnesota association of secondary school  
46 principals or the Minnesota association of school administrators  
47 may elect to be a coordinated member in the fund based on such  
48 employment; provided, however, that no person shall also be  
49 entitled to such membership if ~~he is~~ also a member of a teachers \*  
50 retirement association in a city of the first class organized  
51 pursuant to chapter 354A for the same period of service. For  
52 such persons so employed on June 30, 1975, the election must be  
53 made prior to July 1, 1976. For such persons so employed after  
54 June 30, 1975, the election must be made upon commencing  
55 employment.

56 No change for subd 5 to 9

354\*#44S

57 354.44 RETIREMENT BENEFITS.

58 No change for subd 1 to 1a

59 Subd. 2. COMPUTATION OF MONEY PURCHASE ANNUITY. The  
60 amount of retirement annuity is an amount equal to double the  
61 annuity which could be purchased by the member's accumulated  
62 deductions plus interest thereon. The annuity shall be  
63 determined by the member's age, ~~his~~ sex, double the amount of \*\*  
64 ~~his~~ accumulated deductions, double the interest earned on the \*  
65 accumulated deductions, and the appropriate mortality tables and  
66 interest rates. For the purpose of determining the amount of  
67 the annuity for a basic member, the accumulated deductions prior  
68 to July 1, 1957, and the accumulated deductions subsequent to  
69 July 1, 1957, shall be considered separately.

70 (1) For service rendered prior to July 1, 1957, the  
71 accumulated deductions for any member shall be carried forward  
72 at a fixed amount which is shown credited to ~~his~~ the member's \*  
73 account as of that date. That fixed amount shall also include  
74 any payments in lieu of salary deductions which are to be made

1 in the future and are actually so made pursuant to an agreement  
2 executed between the member and the board as authorized by  
3 section 354.50 or any other authorized payments made by the  
4 member to the fund. The annuity granted with respect to such  
5 period shall be determined by the following:

6 (a) The fixed amount of the accumulated deductions for such  
7 period including the interest credited thereon as earned up to  
8 July 1, 1957.

9 (b) Annuity purchase rates based on the mortality tables  
10 and interest assumption used by the board prior to July 1, 1957  
11 in the case of basic members and an annuity purchase rate based  
12 on an appropriate annuity table of mortality with an interest  
13 assumption as provided in section 354.07, subdivision 1, in the  
14 case of coordinated members.

15 (2) For service rendered subsequent to July 1, 1957, the  
16 accumulated deductions for any member shall consist of the  
17 amounts actually credited to ~~his~~ the member's account by reason  
18 of salary deductions. The annuity granted with respect to such  
19 period shall be determined by the following:

20 (a) accumulated deductions for such period;

21 (b) interest credited on these accumulated deductions from  
22 July 1, 1957, to the date of retirement;

23 (c) interest credited on accumulated deductions including  
24 prior credited interest provided in paragraph (1) from July 1,  
25 1957, to the date of retirement;

26 (d) after the amount available for an annuity granted with  
27 respect to such person is determined in accordance with the  
28 provisions of this subdivision, an additional amount equal to 20  
29 percent of the sum of clause (2) (a) plus interest credited to  
30 members account from July 1, 1957 to date of retirement is to be  
31 added. This added amount is not to be doubled as provided for  
32 other amounts determined in this subdivision;

33 (e) annuity purchase rate based on an appropriate annuity  
34 table of mortality with an interest assumption as provided in  
35 section 354.07, subdivision 1.

36 Subd. 3. APPLICATION FOR RETIREMENT. Retirement may  
37 be made upon application of the member or of someone acting in  
38 ~~his~~ the member's behalf.

39 No change for subd 4 to 5

40 Subd. 6. COMPUTATION OF FORMULA PROGRAM RETIREMENT  
41 ANNUITY. (1) The formula retirement annuity hereunder shall  
42 be computed in accordance with the applicable provisions of the  
43 formula stated in clause (2) hereof on the basis of each  
44 member's average salary for the period of ~~his~~ the member's  
45 formula service credit. For the purposes of computing the  
46 formula benefits under the formula and variable program, if a  
47 combination of these formulas is used, the formula percentages  
48 used will be those percentages in each formula as continued for  
49 the respective years of service from one formula to the next.

50 For all years of formula service credit "average salary"  
51 for the purpose of determining the member's retirement annuity  
52 means the average salary upon which contributions were made and  
53 upon which payments were made to increase the salary limitation  
54 provided in Minnesota Statutes 1971, section 354.511 for the  
55 highest five successive years of formula service credit provided  
56 however that such "average salary" shall not include any more  
57 than the equivalent of 60 monthly salary payments.

58 (2) The average salary as defined in clause (1), multiplied  
59 by the following percentages per year of formula service credit  
60 shall determine the amount of the annuity to which the member  
61 qualifying therefor is entitled:

	Coordinated Member	Basic Member	
63	Each year of service	1.0 percent	2.0 percent
64	during first ten	per year	per year
65	Each year of service	1.5 percent	2.5 percent
66	thereafter	per year	per year

67 (3) Where any member retires prior to age 65 under a  
68 formula annuity, the member shall be paid a retirement annuity  
69 in an amount equal to the normal annuity provided in this  
70 subdivision and subdivision 7, reduced by one-half of one  
71 percent for each month that the member is under age 65 to and  
72 including age 60 and reduced by one-fourth of one percent for  
73 each month under age 60 at the time of retirement except that  
74 for any member who has 30 or more years of allowable service  
75 credit, the reduction shall be applied only for each month which  
76 the member is under age 62.

1 No change for subd 7 to 8

354\*#46S

2 354.46 PAYMENTS AFTER DEATH.

3 No change for subd 1 to 2

4 Subd. 3. PAYMENT AFTER DEATH OF RETIREE. If a  
5 former member dies after ~~his~~ retirement, he the former member or  
6 his a designated beneficiary shall be entitled to the annuity \*  
7 payment due for the full month during which death occurs if no \*  
8 optional or reversionary annuity was designated by the member.  
9 If an optional or reversionary annuity has been designated by  
10 the member, a death benefit shall be paid in accordance with the  
11 provisions of such annuity as described in section 354.45.

12 Subd. 4. Repealed, 1974 c 289 s 59

13 No change for subd 5

354\*#48S

14 354.48 PERMANENT DISABILITY BENEFITS.

15 Subdivision 1. AGE, SERVICE AND SALARY REQUIREMENTS.

16 ~~Where~~ Any member who became totally and permanently disabled \*  
17 after at least ten years of allowable service or after age 50 \*  
18 with five years of allowable service, whichever is sooner, ~~he~~  
19 shall be entitled to a disability benefit in an amount provided  
20 in subdivision 3. If such disabled person's teaching service has  
21 terminated at any time, at least five of the required ten years  
22 of allowable service must have been rendered after last becoming  
23 a member. Any member whose average salary is less than \$75 per  
24 month shall not be entitled to disability benefits.

25 No change for subd 2

26 Subd. 3. COMPUTATION OF BENEFITS. (1) The amount of  
27 the disability benefit granted to members covered under section  
28 354.44, subdivision 2, clauses (1) and (2), is an amount equal  
29 to double the annuity which could be purchased by the member's  
30 accumulated deductions plus interest thereon computed as though  
31 the teacher were age 65 at the time the benefit begins to accrue  
32 and in accordance with the law in effect when the disability  
33 application is received. Any member who applies for a  
34 disability benefit after June 30, 1974 and who failed to make an  
35 election pursuant to Minnesota Statutes 1971, section 354.145,  
36 shall have ~~his~~ the disability benefit computed under the \*  
37 provisions of this clause or clause (2), whichever is larger.

38 The benefit granted shall be determined by the following:

39 (a) the amount of the accumulated deductions;

40 (b) interest actually earned on these accumulated  
41 deductions to the date the benefit begins to accrue;

42 (c) interest for the years from the date the benefit begins  
43 to accrue to the date such member attains age 65 at the rate of  
44 three percent;

45 (d) annuity purchase rates based on an appropriate annuity  
46 table of mortality with interest of five percent.

47 In addition a supplementary monthly benefit shall be paid  
48 to basic members only in accordance with the following table:

49	50 Age When Benefit	51 Supplementary
52	53 Begins to Accrue	54 Benefit
55	56 Under Age 56	57 \$50
58	59 56	60 45
61	62 57	63 40
64	65 58	66 35
67	68 59	69 30
70	71 60	72 25
73	74 61	75 20
76	77 62	78 15
79	80 63	81 10
82	83 64	84 5

85 (2) The disability benefit granted to members covered under  
86 section 354.44, subdivision 6 or 7 shall be computed in the same  
87 manner as the annuity provided in subdivision 6 or 7 of that  
88 section, whichever is applicable. The disability benefit shall  
89 be the formula annuity without the reduction for each month the  
90 member is under age 65 at the time the benefit begins to accrue.

91 (3) For the purposes of computing a retirement annuity when  
92 the member becomes eligible, the amounts paid for disability  
93 benefits shall not be deducted from the individual member's  
94 accumulated deductions. If the disability benefits provided in  
95 this subdivision exceed the monthly average salary of the  
96 disabled member, the disability benefits shall be reduced to an  
97 amount equal to the disabled member's average salary.

1 No change for subd 3a to 5  
 2 Subd. 6. REGULAR PHYSICAL EXAMINATIONS. At least  
 3 once each year during the first five years following the  
 4 allowance of a disability benefit to any member, and at least  
 5 once in every three-year period thereafter, the board shall  
 6 require the disability beneficiary to undergo a medical  
 7 examination to be made at the place of residence of such person,  
 8 or at any other place mutually agreed upon, by a physician or  
 9 physicians engaged by the board. If any examination indicates  
 10 that he the member is no longer permanently and totally disabled \*  
 11 or that he the member is engaged or is able to engage in a \*  
 12 substantial gainful occupation, payments of the disability  
 13 benefit by the fund shall be discontinued. The payments shall \*  
 14 discontinue as soon as he the member is reinstated to the \*  
 15 payroll following sick leave, but in no case shall payment be  
 16 made for more than 60 days after physicians engaged by the board  
 17 find that such person is no longer permanently and totally  
 18 disabled.

19 No change for subd 6a  
 20 Subd. 7. PARTIAL REEMPLOYMENT. Should the disabled  
 21 person resume a gainful occupation and his have earnings are \*  
 22 less than his the person's salary at the date of disability or \*  
 23 the salary currently paid for similar positions, the board shall  
 24 continue the disability benefit in an amount which when added to  
 25 such earnings does not exceed his the person's salary at the \*  
 26 date of disability or the salary currently paid for similar  
 27 positions, whichever is lower, provided the disability benefit  
 28 in such case does not exceed the disability benefit originally  
 29 allowed. The provisions of this subdivision shall not prohibit  
 30 the board from making a determination that a member is no longer  
 31 totally and permanently disabled or that the member is engaged  
 32 or is able to engage in a substantial gainful occupation based  
 33 on the results of the regular physical examinations required by  
 34 subdivision 6 or any other physical examinations required by the  
 35 board. Payment of the disability benefit provided in this  
 36 subdivision during a period of partial reemployment shall be  
 37 discontinued if the board finds that the member is no longer  
 38 totally and permanently disabled.

39 No change for subd 8 to 10  
 354\*#49S

40 354.49 REFUND.  
 41 No change for subd 1 to 2  
 42 Subd. 3. Any person who has attained the age of at least  
 43 65 with less than ten years of credited allowable service shall  
 44 be entitled to receive a refund in an amount equal to his the \*  
 45 person's accumulated deductions plus interest in lieu of a \*  
 46 proportionate annuity pursuant to section 356.32 except those \*  
 47 covered under the provisions of section 354.44, subdivisions 6 \*  
 48 or 7 in which case the refund shall be an amount equal to his \*  
 49 the accumulated deductions credited to his the person's account \*  
 50 as of June 30, 1957 and after July 1, 1957 his the accumulated \*  
 51 deductions plus interest at the rate of five percent compounded  
 52 annually.

53 Subd. 4. Membership in the retirement association of any  
 54 person shall terminate under the following conditions: (1) If a  
 55 person takes a refundment pursuant to this section; (2) When a  
 56 person's retirement annuity first begins to accrue as provided  
 57 in section 354.44, subdivisions 1 and 4; (3) Upon his the \*  
 58 person's ceasing to be a "teacher" whether by resignation, \*  
 59 dismissal, or termination of temporary or provisional employment  
 60 for the purpose of determining eligibility for disability or  
 61 survivorship benefits as provided in sections 354.48,  
 62 subdivision 1 and 354.46, subdivision 1, respectively.

63 Subd. 5. If a person ceases to render teaching service in  
 64 any school or institution to which the provisions of this  
 65 chapter apply and does not make application for refund within  
 66 five years after June 30th of the fiscal year in which the last  
 67 deduction was taken from his salary for the retirement fund and \*  
 68 if his the accumulated deductions are \$500 or less, such \*  
 69 deductions and interest shall be credited to and become a part  
 70 of the retirement fund. In the event such person returns to  
 71 render teaching service in any school or institution to which  
 72 the provisions of this chapter apply and the deductions  
 73 previously credited to the retirement fund are \$5 or more, such  
 74 deductions and interest to date of restoration shall be restored  
 75 to his the person's individual account. If the deductions \*

1 previously credited to the retirement fund are \$5 or more and  
 2 such person applies for a refund pursuant to this section or an  
 3 annuity pursuant to section 354.55, subdivision 3, such  
 4 deductions credited to the retirement fund shall be restored to  
 5 such person's individual account.

## 354\*#50S

6 354.50 TERMINATION OF SERVICE CREDITS.  
 7 Subdivision 1. When any member accepts a refund provided  
 8 in section 354.49, all existing service credits to which the  
 9 member was entitled prior to the acceptance of such refund shall  
 10 terminate and shall not again be restored until the former  
 11 member acquires not less than two years allowable service credit  
 12 subsequent to taking ~~his~~ the last refund. In that event ~~he~~ the \*  
 13 former member may repay such refund. If more than one refund \*  
 14 has been taken, all refunds must be repaid.

15 Subd. 2. If a member desires to repay ~~his~~ the refunds, \*  
 16 payment shall include six percent interest compounded annually  
 17 from date of withdrawal to the date payment is made and shall be  
 18 credited to the fund.

19 Subd. 3. Repealed, 1974 c 289 s 59

20 No change for subd 4

## 354\*#51S

21 354.51 PAYMENTS TO RECEIVE CREDIT FOR PRIOR SERVICE;  
 22 SHORTAGES IN MEMBER DEDUCTIONS.

23 Subdivision 1. No member shall be entitled to make  
 24 payments in lieu of salary deductions to the retirement board to  
 25 receive credit for any period of service prior to that date for  
 26 which employee contributions were not deducted from ~~his~~ the \*  
 27 member's salary, except as provided in subdivision 4, or \*  
 28 sections 354.50 or 354.53.

29 Subd. 2. Repealed, 1974 c 289 s 59

30 Subd. 3. Repealed, 1974 c 289 s 59

31 No change for subd 4 to 5

## 354\*#52S

32 354.52 REPORTS.

33 No change for subd 2 to 3

34 Subd. 4. At least once each month, the chief  
 35 administrative officer of each employing school district or  
 36 managing body of schools and institutions to which the  
 37 provisions of this chapter apply shall transmit all amounts due  
 38 and furnish a signed statement indicating the amount due and  
 39 transmitted, and shall transmit a statement containing such  
 40 other information as the executive director shall require.  
 41 Signing the statement shall have the force and effect of an oath  
 42 as to the correctness of the amount due and transmitted. Any  
 43 amount thus due and not transmitted shall accrue interest at the  
 44 rate of six percent compounded annually commencing 15 days after  
 45 the date first due until the amount is transmitted and shall be  
 46 paid by the employing school district or other managing body.  
 47 The state treasurer shall credit all money received or withheld  
 48 pursuant to the provisions of this chapter to the fund and the  
 49 reports and date received by the state treasurer from each  
 50 reporting agency shall be available for the board. Any person  
 51 wilfully failing to perform any of the duties imposed ~~upon him~~ \*  
 52 by this section shall be guilty of a misdemeanor.

53 No change for subd 5

## 354\*#55S

54 354.55 OPTIONS TO CERTAIN MEMBERS.

55 No change for subd 2

56 Subd. 3. Any person who ceased teaching service prior to \*  
 57 July 1, 1957, who left ~~his~~ accumulated deductions in the fund \*  
 58 for the purpose of receiving when eligible, a retirement annuity \*  
 59 shall have ~~his~~ the annuity computed in accordance with the law \*  
 60 in effect at the date ~~he~~ the person ceased teaching service, \*  
 61 except that if such person has ten or more years of allowable \*  
 62 service credit, ~~his~~ the retirement annuity shall be determined \*  
 63 under the law in effect on June 30, 1969.

64 Subd. 4. Repealed, 1974 c 289 s 59

65 No change for subd 5

66 Subd. 6. Each annuitant who as a member of the fund \*  
 67 commenced drawing ~~his~~ the annuity between August 1, 1931 and \*  
 68 June 30, 1965, but not including ~~his~~ the annuitant's \*  
 69 beneficiaries, shall be paid ten percent of ~~his~~ the present \*  
 70 monthly annuity if such annuitant retired pursuant to Minnesota \*  
 71 Statutes 1965, Sections 354.33 and 354.34 and fifteen percent \*  
 72 of ~~his~~ the present monthly annuity if such annuitant retired \*

1 pursuant to Minnesota Statutes 1953, Section 135.10 and  
2 Minnesota Statutes 1965, Sections 354.44 and 354.45, in addition  
3 to the amounts such annuitant is otherwise entitled to receive  
4 under the provisions of Minnesota Statutes 1965, Chapter 354.

5 Subd. 7. Repealed, 1974 c 289 s 59

6 Subd. 8. Repealed, 1974 c 289 s 59

7 Subd. 9. Repealed, 1974 c 289 s 59

8 Subd. 10. Any benefit to which any person may be entitled  
9 under this chapter may be reduced in amount upon application of  
10 the person entitled thereto to the board of trustees, provided  
11 that such person shall first relinquish in writing all claim to  
12 that part of the full benefit which is the difference between  
13 the benefit which ~~he~~ the person would be otherwise entitled to \*  
14 receive and the benefit which ~~he~~ the person will receive. The \*  
15 reduced benefit shall be payment in full of all amounts due  
16 under this chapter for the month for which the payment is made  
17 and acceptance of the reduced benefit releases the retirement  
18 association from all obligation to pay to such person the  
19 difference between the amount of the reduced benefit and the  
20 full amount of the benefit which such person would otherwise  
21 have received. After July 1, 1971, any benefit reduced under  
22 the provisions of this subdivision may not again be restored.

23 No change for subd 11

24 Subd. 12. When any member retires under the law in effect  
25 prior to July 1, 1973 that portion of ~~his~~ the member's annuity \*  
26 based on accumulations after June 30, 1957 under the provisions  
27 of Minnesota Statutes 1971, Section 354.44, Subdivision 2 and  
28 all accumulations under the provisions of Minnesota Statutes  
29 1971, Section 354.33, Subdivision 1 shall be calculated using  
30 the same mortality table and interest assumption used to  
31 transfer the required reserves to the Minnesota post-retirement  
32 investment fund.

33 Subd. 13. Any person who ceased teaching service prior to  
34 July 1, 1968, who has ten years or more of allowable service and  
35 left ~~his~~ accumulated deductions in the fund for the purpose of \*  
36 receiving when eligible a retirement annuity, shall have ~~his~~ the \*  
37 annuity computed in accordance with the law in effect on June \*  
38 30, 1969, except that the portion of ~~his~~ the annuity based on \*  
39 accumulations after June 30, 1957, under the provisions of  
40 Minnesota Statutes 1967, Section 354.44, Subdivision 2, and all  
41 accumulations under the provisions of Minnesota Statutes 1967,  
42 Section 354.33, Subdivision 1, shall be calculated using the  
43 same mortality table and interest assumption used to transfer  
44 the required reserves to the Minnesota post-retirement  
45 investment fund.

46 No change for subd 14 to 19

354\*#62S

47 354.62 PARTICIPATION IN MINNESOTA VARIABLE ANNUITY  
48 INVESTMENT FUND.

49 No change for subd 1

50 Subd. 2. INDIVIDUAL ELECTION. Each member of the  
51 teachers retirement association may elect to participate in the  
52 variable annuity division by filing a written notice with the  
53 board of trustees on forms provided by the board.

54 (1) Employee variable annuity contributions to the variable  
55 annuity division shall be pursuant to the option available in  
56 section 354.44, subdivision 7, the employee variable annuity  
57 contributions shall be an amount equal to one-half of the  
58 employee rates specified in section 354.42, subdivision 2.

59 (2) Employer variable annuity contributions shall be an  
60 amount equal to the employee variable annuity contributions  
61 provided in clause (1). The deficiency in equal employer  
62 variable annuity contributions which shall exist prior to July  
63 1, 1975 shall be recovered from the additional employer  
64 contributions made prior to July 1, 1975 pursuant to section  
65 354.42, subdivision 5.

66 (3) There shall be provided for members participating in  
67 the variable annuity division a separate account for each member  
68 which will show ~~his~~ the member's variable account accumulations \*  
69 as defined in section 354.05, subdivision 23. The board shall  
70 establish such other accounts in the variable annuity division  
71 as it deems necessary for the operation of this provision.

72 (4) After June 30, 1974 there shall be no new participants  
73 in this program.

74 (5) Any active member currently participating in the  
75 variable annuity division may elect to cease participation in

1 the variable annuity division effective the July 1 following the  
 2 filing of a written notice with the board of trustees on forms  
 3 provided by the board. If this election is made, all future  
 4 contributions will go to the formula program.

5 No change for subd 3 to 5

## 354\*#66S

6 354.66 QUALIFIED PART-TIME TEACHERS; PARTICIPATION IN  
 7 FUND.

8 No change for subd 1 to 10

9 Subd. 11. Neither subdivision 5 nor 8 shall be construed  
 10 to prohibit a teacher who qualifies for full accrual of service  
 11 credit from and employee contributions to the retirement fund  
 12 pursuant to this section in any year from being employed as a  
 13 substitute teacher by any school district during that year.  
 14 Notwithstanding the provisions of sections 354.091 and 354.42, a  
 15 teacher may not qualify for full accrual of service credit from  
 16 and employee contributions to the retirement fund for other  
 17 teaching service rendered for any part of any year for which ~~he~~ \*  
 18 the teacher qualifies for full accrual of service credit from \*  
 19 and employee contributions to the retirement fund pursuant to  
 20 this section or section 354A.094.

## 354A#091S

21 354A.091 TEACHERS ON EXTENDED LEAVE.

22 No change for subd 1 to 2

23 Subd. 3. EFFECT OF NONPAYMENT. A teacher on extended  
 24 leave pursuant to section 125.60 who does not make employee  
 25 contributions or whose employer contribution is not made to the  
 26 applicable teachers retirement fund association in any year  
 27 shall be deemed to have ceased to be an active member of the  
 28 association and to have ceased to render teaching services  
 29 beginning in that year for purposes of this chapter and the  
 30 articles of incorporation and bylaws of the association, and may  
 31 not pay employee or employer contributions into the fund in any  
 32 subsequent year of the leave. Nonpayment of contributions into  
 33 the fund shall not affect the rights or obligations of the  
 34 teacher or ~~his~~ the employing school district under section \*  
 35 125.60.

36 No change for subd 4 to 5

37 Subd. 6. A teacher who makes employee contributions to and  
 38 receives allowable service credit in the applicable teacher's  
 39 retirement fund association pursuant to this section may not  
 40 make employee contributions or receive allowable service credit  
 41 for the same period of time in any other Minnesota public  
 42 employee pension plan, except a volunteer firefighters' relief  
 43 association governed by sections 69.771 to 69.776. This  
 44 subdivision shall not be construed to prohibit a member who pays  
 45 employee contributions and receives allowable service credit in  
 46 the fund pursuant to this section in any year from being  
 47 employed as a substitute teacher by any school district during  
 48 that year. Notwithstanding the provisions of this chapter or  
 49 the bylaws of a retirement association, a teacher may not pay  
 50 retirement contributions or receive allowable service credit in  
 51 the fund for teaching service rendered for any part of any year  
 52 for which ~~he~~ the teacher pays retirement contributions or \*  
 53 receives allowable service credit pursuant to section 354.094 or  
 54 this section while on an extended leave of absence pursuant to  
 55 section 125.60.

## 355\*#03S

56 355.03 EMPLOYEES, CONTRIBUTIONS.

57 Subdivision 1. Every employee of the state, or any of its  
 58 political subdivisions, whose services are covered by the  
 59 agreement entered into under section 355.02 shall be required to  
 60 pay for the period of such coverage, into the contribution fund  
 61 established by section 355.04, contributions, with respect to  
 62 wages, equal to the amount of the employee's tax which would be  
 63 imposed by the federal insurance contributions act if such  
 64 services constituted employment within the meaning of that act.  
 65 Such liability shall arise in consideration of the employee's  
 66 retention in the service of the state, or any of its political  
 67 subdivisions, or ~~his~~ the employee's entry upon such service, \*  
 68 after the enactment of this chapter, as amended.

69 No change for subd 2 to 3

## 355\*#206S

70 355.206 CERTIFICATION BY GOVERNOR.

71 ~~If~~ The governor receives on receiving satisfactory evidence \*  
 72 that the conditions specified in section 218 (d) (7) of the



1 social security act have been met with respect to the St. Paul  
2 teachers retirement fund association, ~~he~~ shall so certify to the  
3 secretary of health, education, and welfare. \*

355\*#23S

4 355.23 DULUTH REFERENDUM.  
5 Subdivision 1. Upon the request of the governing body of  
6 the Duluth teachers retirement fund association and the board of  
7 education of Independent School District No. 709 or upon the  
8 petition of at least ten percent of the active members of the  
9 association and the board of education of Independent School  
10 District No. 709, the governor shall be empowered to authorize a  
11 referendum to be held at a date to be set by ~~him~~ the governor, \*  
12 and to designate any agency or individual to supervise its  
13 conduct, in accordance with the requirements of section 218(d)  
14 (3) of the Social Security Act, on the question of whether  
15 service by teachers in positions covered by the Duluth teachers  
16 retirement fund association should be excluded from or included  
17 in an agreement under the enabling act. The notice of  
18 referendum required by section 218(d) (3) (C) of the Social  
19 Security Act to be given to teachers shall contain or shall be  
20 accompanied by a statement, in such form and such detail as the  
21 agency or individual designated to supervise the referendum  
22 shall deem necessary and sufficient, to inform the teachers of  
23 the rights which will accrue to them and their dependents and  
24 survivors, and the liabilities to which they will be subject, if  
25 their services are included in an agreement under the enabling  
26 act, and the statement shall contain in such form and such  
27 detail as deemed necessary the plan proposed for the  
28 integration, supplementation or combination of the teachers  
29 retirement fund association and social security. The cost of  
30 any referendum hereby authorized shall be paid by the teachers  
31 retirement fund association in reference to which the referendum  
32 is held.

33 Subd. 2. Upon ~~receiving-evidence-satisfactory-to-him~~ being \*  
34 satisfied by the evidence that with respect to any such \*  
35 referendum the conditions specified in section 218(d) (3) of the  
36 Social Security Act have been met, the governor shall so certify  
37 to the secretary of health, education and welfare.

38 No change for subd 3

355\*#24S

39 355.24 RETROACTIVE PROCEDURE.  
40 No change for subd 1  
41 Subd. 2. Effective retroactively with respect to services  
42 performed after the effective date as specified in the  
43 modification, by teachers who are such on the date the  
44 modification is entered into or thereafter, each and every  
45 political subdivision is hereby authorized, required, and  
46 directed, in consideration of sections 355.21 to 355.27, to  
47 impose upon each such teacher a contribution with respect to ~~his~~ \*  
48 the teacher's wages, not exceeding the amount of the employee \*  
49 tax which would be imposed by the Federal Insurance Contribution  
50 Act if such services constituted employment within the meaning  
51 of that act, and to deduct the amount of such contribution \*  
52 from ~~his~~ the teacher's wages as and when paid. With respect to  
53 deductions from wages for services performed in positions  
54 covered by such teachers retirement fund association, the  
55 deductions shall be made by the employer who is such on the date  
56 of the modification irrespective of for whom the services were  
57 performed during such prior period. Contributions so collected  
58 shall be paid into the contribution fund in partial discharge of  
59 the liability of each and every political subdivision in respect  
60 thereto.

61 No change for subd 3

355\*#285S

62 355.285 CERTIFICATION BY GOVERNOR.  
63 ~~If~~ The governor receives, on receiving satisfactory \*  
64 evidence that the conditions specified in section 218 (d) (7) of  
65 the social security act have been met with respect to the  
66 Minneapolis teachers retirement fund association, ~~he~~ shall so \*  
67 certify to the secretary of health, education, and welfare.

355\*#293S

68 355.293 CERTIFICATION BY GOVERNOR.  
69 ~~If~~ The governor or an official of the state designated by \*  
70 ~~him~~ the governor for the purpose receives, on receiving \*  
71 satisfactory evidence that the conditions specified in section \*  
72 218(d) (7) of the social security act have been met, ~~he~~ shall so \*

1 certify to the secretary of health, education and welfare.

355\*#296S

2 355.296 RETROACTIVE EMPLOYER-EMPLOYEE CONTRIBUTIONS.

3 Subdivision 1. Effective retroactively with respect to  
4 employment after the date of retroactive coverage by public  
5 employees who are employed on the date of the agreement or  
6 modification and who are included within such agreement or  
7 modification, the board of trustees of the public employees  
8 retirement association shall pay out of its fund an amount for  
9 each public employee so included which is equal to the amount of  
10 employee tax which would have been imposed by the federal  
11 insurance contribution act, if such service constituted  
12 employment within the meaning of that act. This payment shall  
13 be computed from the date of retroactive coverage to the date  
14 that deductions are taken from the wages of each such public  
15 employee as provided hereafter. The amount so paid by the  
16 trustees shall be deducted from the accumulated deductions, if  
17 any, from the salary of the public employee which have been paid  
18 to the public employees retirement association. If the  
19 accumulated deductions of any public employee are not sufficient  
20 to pay for his the employee's retroactive contribution, such \*  
21 employee shall pay the difference to the fund. To the extent  
22 that the difference is not paid by the employee, it shall \*  
23 constitute a liability of his the employer. An employer shall  
24 be subrogated to the rights of the association in respect of any  
25 amount paid by the employer on account of its liability in  
26 behalf of the employee.

27 No change for subd 2 to 3

28 Subd. 4. Any member who elects social security coverage  
29 from and after January 1, 1969 and thereby transfers to the  
30 coordinated fund and from whose account retroactive social  
31 security employee taxes are paid by the board of trustees of the  
32 public employees retirement association, shall be required to  
33 reimburse the said association in an amount equal to the  
34 difference between employee contributions at the rate of six  
35 percent of his total salary and the aggregate of three percent \*  
36 of said salary plus the rate of retroactive social security  
37 employee taxes paid on said salary restricted to earnings  
38 limitations imposed by the federal insurance contribution act  
39 covering public service rendered from and after said date of  
40 January 1, 1969. In the event any such member does not  
41 reimburse the association within 30 days following notification  
42 by the public employees retirement association of the amount so  
43 due, interest shall accrue thereon at the rate of six percent  
44 per annum compounded annually from the date first payable. The  
45 governmental subdivision in which any such member rendered  
46 public service from and after January 1, 1969 covering which  
47 service retroactive social security employer taxes are paid by  
48 the board of trustees of the public employees retirement  
49 association shall be required to reimburse the said association  
50 in an amount equal to the aforementioned difference, such amount  
51 to be paid from the proceeds of a tax levy made pursuant to  
52 section 353.28, or from other funds available to the employer.

355\*#297S

53 355.297 CURRENT EMPLOYER-EMPLOYEE CONTRIBUTION.

54 No change for subd 1

55 Subd. 2. With respect to services performed after the  
56 effective date of the agreement or modification, each public  
57 employee included in the agreement or modification shall pay  
58 contributions with respect to wages and the same will be  
59 deducted from his the employee's wages as and when paid in an \*  
60 amount equal to the employee tax which would be imposed by the  
61 federal insurance contributions act if the services covered by  
62 the agreement or modification constituted employment within the  
63 meaning of that act. Contributions so made shall be paid into  
64 the contributions fund provided for in the enabling act in  
65 partial discharge of the liability of the state and each  
66 political subdivision in respect thereto. Failure to deduct  
67 such contribution shall not relieve the political subdivision  
68 from liability therefor.

355\*#46S

69 355.46 SOCIAL SECURITY CONTRIBUTIONS.

70 No change for subd 1 to 3

71 Subd. 5. After July 1, 1971, any member of the fund who  
72 elects social security coverage thereby causing the board of  
73 trustees of the teachers retirement association to pay

1 retroactive social security employee taxes from ~~his~~ the member's \*  
 2 account, shall be required to reimburse the said association in  
 3 an amount equal to the difference which occurs when employee  
 4 contributions at the rate of seven percent of ~~his~~ total salary \*  
 5 are subtracted from the sum of three and one-half percent of ~~his~~ \*  
 6 total salary plus the amount of social security employee taxes  
 7 paid on such salary in accordance with the federal insurance  
 8 contribution act covering public service after January 1, 1971.  
 9 In the event any such member does not reimburse the association  
 10 within one year, or before retirement, whichever is earlier,  
 11 following notification by the teachers retirement association of  
 12 the amount so due, formula service credit will be prorated in  
 13 accordance with section 354.05, subdivision 25.

355\*#59S

14 355.59 CERTIFICATION BY GOVERNOR.  
 15 ~~If~~ The governor receives, on receiving satisfactory \*  
 16 evidence that the conditions specified in section 218(d) (7) of  
 17 the social security act have been met with respect to the  
 18 teachers retirement association, ~~he~~ shall so certify to the \*  
 19 secretary of health, education, and welfare.

355\*#73S

20 355.73 REFERENDUM.  
 21 No change for subd 1  
 22 Subd. 2. At least 35 percent of the employees of any  
 23 public hospital may petition the governor to conduct a  
 24 referendum pursuant to section 218(d) (6) (C) of the social  
 25 security act to be held on the date to be set by ~~him~~ the \*  
 26 governor in accordance with the requirements of said act. \*  
 27 Subd. 3. The governing body of any public hospital may  
 28 petition the governor to conduct a referendum pursuant to  
 29 section 218(d) (6) (C) of the social security act to be held at  
 30 a date to be set by ~~him~~ the governor in accordance with the \*  
 31 requirements of said act. \*  
 32 No change for subd 4 to 8

355\*#75S

33 355.75 CERTIFICATION BY GOVERNOR.  
 34 ~~If~~ The governor receives, on receiving satisfactory \*  
 35 evidence that the conditions specified in section 218(d) (7) of  
 36 the social security act have been met ~~he~~ shall so certify to the \*  
 37 secretary of health, education, and welfare.

355\*#77S

38 355.77 RETROACTIVE EMPLOYER-EMPLOYEE CONTRIBUTIONS.  
 39 Subdivision 1. Effective retroactively with respect to  
 40 employment after the date of retroactive coverage by hospital  
 41 employees who are employed on the date of the agreement or  
 42 modification and who are included within such agreement or  
 43 modification, the board of trustees of the public employees  
 44 retirement association shall pay out of its fund an amount for  
 45 each hospital employee so included which is equal to the amount  
 46 of employee tax which would have been imposed by the federal  
 47 insurance contribution act, if such service constituted  
 48 employment within the meaning of that act. This payment shall  
 49 be computed from the date of retroactive coverage to the date  
 50 that deductions are taken from the wages of each such hospital  
 51 employee as provided in section 355.78. The amount so paid by  
 52 the trustees shall be deducted from the accumulated deductions  
 53 of each such member of the public employees retirement  
 54 association. If the accumulated deductions of any member are  
 55 not sufficient to pay for ~~his~~ the member's retroactive \*  
 56 contribution, such member shall pay the difference to the fund.  
 57 To the extent that the difference is not paid by the employee,  
 58 it shall constitute a liability of ~~his~~ the employer. An \*  
 59 employer shall be subrogated to the rights of the association in  
 60 respect of any amount paid by the employer on account of its  
 61 liability in behalf of the employee.  
 62 No change for subd 2 to 3  
 63 Subd. 4. Any member who is employed by a public hospital  
 64 and who elects social security coverage from and after January  
 65 1, 1969 and thereby transfers to the coordinated fund and from  
 66 whose account retroactive social security employee taxes are  
 67 paid by the board of trustees of the public employees retirement  
 68 association, shall be required to reimburse the said association  
 69 in an amount equal to the difference between employee  
 70 contributions at the rate of six percent of ~~his~~ total salary and \*  
 71 the aggregate of three percent of said salary plus the rate of  
 72 retroactive social security employee taxes paid on said salary

1 restricted to earnings limitations imposed by the federal  
2 insurance contribution act covering public service rendered from  
3 and after said date of January 1, 1969. In the event any such  
4 member does not reimburse the association within 30 days  
5 following notification by the public employees retirement  
6 association of the amount so due, interest shall accrue thereon  
7 at the rate of six percent per annum compounded annually from  
8 the date first payable. The governmental subdivision operating  
9 the public hospital in which any such member rendered public  
10 service from and after January 1, 1969 covering which service  
11 retroactive social security employer taxes are paid by the board  
12 of trustees of the public employees retirement association shall  
13 be required to reimburse the said association in an amount equal  
14 to the aforementioned difference, such amount to be paid from  
15 the proceeds of a tax levy made pursuant to section 353.28, or  
16 from other funds available to the employer.

355\*#78S

17 355.78 CURRENT EMPLOYER-EMPLOYEE CONTRIBUTIONS.

18 No change for subd 1

19 Subd. 2. With respect to services performed after the date  
20 of execution of the agreement or modification, each hospital  
21 employee included in the agreement or modification shall pay  
22 contributions with respect to wages and the same shall be  
23 deducted from ~~his~~ the employee's wages as and when paid in an \*  
24 amount equal to the employee tax which would be imposed by the  
25 federal insurance contributions act if the services covered by  
26 the agreement or modification constituted employment within the  
27 meaning of that act. Contributions so made shall be paid into  
28 the contribution fund provided for in the enabling act in  
29 partial discharge of the liability of the state and each  
30 political subdivision in respect thereto. Failure to deduct  
31 such contribution shall not relieve the hospital employee, or  
32 the state or the political subdivision, from liability therefor.

356\*#30S

33 356.30 COMBINED SERVICE ANNUITY.

34 No change for subd 1

35 Subd. 2. REPAYMENT OF REFUNDS. Any person who is  
36 employed in a position covered by one of the funds enumerated in  
37 subdivision 3 who has received a refund from any other of such  
38 funds may repay such refund to the respective fund under such  
39 terms and conditions as are consistent with the laws governing  
40 such other fund, except that ~~he~~ the person need not be a \*  
41 currently contributing member of the fund to which the refund is  
42 repaid at the time the repayment is made.

43 No change for subd 3

356\*#451S

44 356.451 PROVISIONAL MEMBERSHIP FOR CERTAIN PERSONS IN  
45 VARIOUS RETIREMENT FUNDS OR PLANS.

46 Subdivision 1. RESERVE ACCOUNT FOR PROVISIONAL MEMBERS;  
47 AUTHORIZATION. Notwithstanding any provisions to the  
48 contrary of the laws governing the funds enumerated in  
49 subdivision 2, any person who is employed in subsidized  
50 on-the-job training, work experience or public service  
51 employment as an enrollee under the federal comprehensive  
52 employment and training act, who does not have as of the later  
53 of March 30, 1978 or the date of employment sufficient service  
54 credit in the retirement fund to meet the minimum vesting  
55 requirements for a deferred annuity, who otherwise meets all of  
56 the applicable eligibility requirements of the fund and who is  
57 designated as such by the city council of the city of  
58 Minneapolis or the board of education of special school district  
59 number 1, whichever is applicable, shall be considered a  
60 provisional member of the fund. There shall be established a  
61 subsidiary reserve account for provisional members which shall  
62 be managed by the board of trustees of the fund as a separate  
63 account and which shall not be considered as an asset or a  
64 liability of the fund. To this account shall be credited all  
65 employee and required employer contributions made by or on  
66 account of provisional members. A separate record for each  
67 provisional member shall be maintained showing the length of  
68 service completed, the accrued employee and required employer  
69 contributions made by or on account of each provisional member,  
70 and the actual rate of interest earned on the assets of the  
71 account. The assets of the separate account shall be invested  
72 in the same manner as and subject to the same limitations which  
73 are applicable to the general assets of the retirement fund. The

1 board of trustees shall remit back to the prime sponsor of the  
2 federal comprehensive employment and training act program  
3 periodically as required by the applicable federal regulation an  
4 amount equal to the total required employer contributions made  
5 on account of provisional members who terminate or who are  
6 terminated from subsidized on-the-job training, work experience  
7 or public service employment without obtaining unsubsidized  
8 employment with an employer who employs members who regularly  
9 have retirement coverage provided by that retirement fund or by  
10 a retirement fund enumerated in section 356.30, subdivision 3,  
11 or without obtaining sufficient service credit to become  
12 entitled to a deferred retirement annuity had they been regular  
13 members of that retirement fund during the period of their  
14 provisional membership, plus interest at the rate or rates  
15 actually earned and in addition any amounts which exceed the  
16 funds required to cover current provisional members as projected  
17 by the board of trustees. Any provisional member who terminates  
18 or is terminated from subsidized on-the-job training, work  
19 experience or public service employment without obtaining  
20 unsubsidized employment with an employer who employs members who  
21 regularly have retirement coverage provided by that retirement  
22 fund or by a retirement fund enumerated in section 356.30,  
23 subdivision 3, or without obtaining sufficient service to become  
24 entitled to a deferred retirement annuity had ~~he~~ the provisional  
25 member been a regular member of the retirement fund during the  
26 period of ~~his~~ provisional membership shall be entitled upon  
27 making valid written application to a refund of all employee  
28 contributions credited to the member in the subsidiary reserve  
29 account for provisional members, plus interest at the average  
30 actual rate of interest earned on the assets of the account, but  
31 not to exceed the rate of three and one-half percent per annum  
32 compounded annually from the date of commencement of provisional  
33 membership, computed to the first day of the month in which the  
34 refund is processed, and based on fiscal year balances. If the  
35 provisional member obtains unsubsidized employment with an  
36 employer who employs members who regularly have retirement  
37 coverage provided by that retirement fund or by a retirement  
38 fund enumerated in section 356.30, subdivision 3, or obtains  
39 sufficient service to become entitled to a deferred retirement  
40 annuity had the period of provisional membership been as a  
41 regular member, the board of trustees shall transfer the total  
42 employee and required employer contributions and any interest  
43 attributable to those contributions to the regular retirement  
44 fund and shall credit the period of service as a provisional  
45 member as allowable or formula service. Unless the provisional  
46 member becomes a regular member of the same retirement fund or a  
47 retirement fund enumerated in section 356.30, subdivision 3,  
48 within the time period allowed under the applicable federal  
49 regulations following the person's termination of provisional  
50 status, no period of provisional membership shall be considered  
51 allowable service for purposes of the combined service annuity  
52 pursuant to section 356.30 or any service in more than one  
53 retirement fund provision. For any former provisional member  
54 who becomes a regular member of a retirement fund enumerated in  
55 section 356.30, subdivision 3, the board of trustees shall  
56 require written certification of the fact of unsubsidized  
57 employment from the subsequent employer and of the fact of  
58 regular fund membership from the subsequent retirement fund. If  
59 any provisional member obtains service in an amount sufficient  
60 to entitle the provisional member to a disability benefit or the  
61 provisional member's survivor to a survivor's benefit had the  
62 provisional member been a regular member for that period of  
63 service, then the provisional member or the provisional member's  
64 survivor shall be entitled to a benefit when otherwise qualified  
65 notwithstanding the fact that the person was a provisional  
66 member. Upon the commencement of such benefit, an amount equal  
67 to the contributions and interest credited to the provisional  
68 member shall be transferred from the reserve account for  
69 provisional members to the regular fund. In any actuarial  
70 valuation made by the fund pursuant to this chapter, the results  
71 of the subsidiary reserve account for provisional members shall  
72 be contained in a separate calculation or tabulation. The  
73 separate calculation or tabulation shall use the actuarial  
74 assumptions used by the fund which are appropriate to the  
75 experience of the subsidiary reserve account for provisional  
76 members, and shall include the items contained in section

\*  
\*  
\*

1 356.215, subdivision 4, clauses (1), (2), (6)(a), and (11).  
2 No change for subd 2

357\*#021S

3 357.021 CLERK OF DISTRICT COURT; FEES.

4 No change for subd 1a

5 Subd. 2. FEE AMOUNTS. The fees to be charged and  
6 collected by the clerk of district court shall be as follows:

7 (1) In every civil action or proceeding in said court, the  
8 plaintiff, petitioner, or other moving party shall pay, when the  
9 first paper ~~on-his-part~~ is filed for that party in said action, \*  
10 a fee of \$20, except that in an action for marriage dissolution,  
11 the fee is \$55.

12 The defendant or other adverse or intervening party, or any  
13 one or more of several defendants or other adverse or  
14 intervening parties appearing separately from the others, shall  
15 pay, when the first paper ~~on-his-or-their-part~~ is filed for that \*  
16 party in said action, a fee of \$15. \*

17 The party requesting a trial by jury shall pay \$15.

18 The fees above stated shall be the full trial fee  
19 chargeable to said parties irrespective of whether trial be to  
20 the court alone, to the court and jury, or disposed of without  
21 trial, and shall include the entry of judgment in the action,  
22 but does not include copies or certified copies of any papers so  
23 filed or proceedings under sections 106A.005 to 106A.811, except  
24 the provisions therein as to appeals.

25 (2) Certified copy of any instrument from a civil or  
26 criminal proceeding \$5 and \$3.50 for an uncertified copy.

27 (3) Issuing a subpoena \$1 for each name.

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

32 (5) Issuing a transcript of judgment, or for filing and  
33 docketing a transcript of judgment from another court, \$5.

34 (6) Filing and entering a satisfaction of judgment, partial  
35 satisfaction or assignment of judgment, \$5.

36 (7) Certificate as to existence or nonexistence of  
37 judgments docketed, \$1 for each name certified to and \$1 for  
38 each judgment certified to.

39 (8) Filing and indexing trade name; or recording notary  
40 commission; or recording basic science certificate; or recording  
41 certificate of physicians, osteopaths, chiropractors,  
42 veterinarians or optometrists, \$5.

43 (9) For the filing of each partial, final, or annual  
44 account in all trusteeships, \$10.

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

48 No change for subd 2a to 4

49 Subd. 5. Notwithstanding any other provision of the law to  
50 the contrary, no fee otherwise required to be paid to the clerk  
51 of district court by a defendant or defendants when ~~the-first~~ \*  
52 paper-on-his-or-their-part-is-filed filing the first paper for \*  
53 that party in an action, shall be paid by the state of \*  
54 Minnesota, or any department or agency thereof, when the state  
55 or a department or agency as plaintiff enters judgment pursuant  
56 to a confession of judgment executed by the defendant.

357\*#07S

57 357.07 DEPOSIT FOR FEES.

58 No civil action, appeal, or proceeding shall be entered  
59 with the clerk of the district court until the person desiring  
60 the entry deposits with the clerk the sum of \$5 on account of  
61 fees in the case and out of which the clerk shall satisfy the  
62 fees as they accrue. Whenever the sum, or any further deposit,  
63 is exhausted the clerk may require as a condition for further  
64 entries or fees an additional deposit of \$1. Any balance  
65 remaining with the clerk after determination of the case shall  
66 be returned to the depositor, ~~his~~ or the depositor's agent or \*  
67 attorney. Fees and charges for a transcript of the minutes of  
68 any trial, or of any papers on file, shall be at the rate of 75  
69 cents for the first three folios, 15 cents for each additional  
70 folio, and 50 cents for the certificate.

357\*#08S

71 357.08 PAID BY APPELLANT IN APPEAL.

72 There shall be paid to the clerk of the appellate courts by  
73 the appellant, or moving party or person requiring the service,

1 in all cases of appeal, certiorari, habeas corpus, mandamus,  
 2 injunction, prohibition, or other original proceeding, when  
 3 initially filed with the clerk of the appellate courts, the sum  
 4 of \$50 to the clerk of the appellate courts. In addition, there  
 5 shall be paid by the appellant or moving party or person the sum  
 6 of \$10 to the court or agency whose decision is sought to be  
 7 reviewed. No additional filing fee shall be required for a  
 8 petition for accelerated review by the supreme court. A filing  
 9 fee of \$50 shall be paid to the clerk of the appellate courts  
 10 upon the filing of a petition for review from a decision of the  
 11 court of appeals.

12 The clerk shall not file any paper, issue any writ or  
 13 certificate, or perform any service enumerated herein, until the  
 14 payment has been made for it. He The clerk shall pay the sum  
 15 into the state treasury as provided for by section 15A.01. \*

16 The charges provided for shall not apply to disbarment  
 17 proceedings, nor to an action or proceeding by the state taken  
 18 solely in the public interest, where the state is the appellant  
 19 or moving party, nor to copies of the opinions of the court  
 20 furnished by the clerk to the parties before judgment, or  
 21 furnished to the district judge whose decision is under review,  
 22 or to such law library associations in counties having a  
 23 population exceeding 50,000, as the court may direct.

357\*#09S

24 357.09 SHERIFFS.

25 No change for subd 1 to 2

26 Subd. 3. He The sheriff shall be allowed reasonable and  
 27 necessary expenses actually paid out for food furnished any  
 28 prisoner while conducting him the prisoner to jail and for his  
 29 the prisoner's transportation by a common carrier. \*

30 No change for subd 4 to 8

357\*#11S

31 357.11 CORONERS.

32 Fees for viewing or examining each dead body, for holding  
 33 an inquest, for preparing folios, and allowances for mileage for  
 34 necessary travel shall be determined by the county board.

35 (1) In performing the sheriff's duties a coroner shall  
 36 receive the fees allowed to the sheriff for like services.

37 (2) Fees and mileage for physicians called by the coroner  
 38 to make autopsies shall be determined by the county board. A  
 39 coroner or deputy coroner, who is duly licensed and registered  
 40 to practice medicine and surgery in this state, shall not be  
 41 disqualified from rendering medical care or hospitalization to a  
 42 recipient of public relief or being appointed an examiner in  
 43 insanity or incompetency hearings, or from being compensated  
 44 therefor, by virtue of holding such office. A coroner or deputy  
 45 coroner, who is a duly licensed funeral director or embalmer in  
 46 this state, shall not be disqualified from performing any duties  
 47 prescribed by law for each from rendering such services to a  
 48 recipient of public relief, or from being compensated therefor,  
 49 by virtue of holding such office. This chapter shall apply to  
 50 all counties now having or hereafter having a population of less  
 51 than 275,000 but shall not apply to any county where such fees  
 52 are now fixed by special laws.

53 (4) The county board of any such county may allow the  
 54 reasonable and necessary expenses of any such coroner or his  
 55 coroner's deputies, incurred for ambulance, telephone tolls,  
 56 telegrams, or postage, solely for official business. \*

357\*#12S

57 357.12 CONSTABLES.

58 The fees to be charged by a constable shall be as follows:

59 (1) for serving a warrant or other writ, not otherwise  
 60 provided for, 25 cents for each person named in it and served;

61 (2) for a copy of each summons delivered on request or left  
 62 at the residence of defendant, 25 cents;

63 (3) serving a subpoena or summons, 50 cents for each person  
 64 named in it and served; provided, that any summons or subpoena  
 65 may be served by any person not a party to the action, but if  
 66 served by any person other than an officer, no fees or mileage  
 67 shall be allowed and service shall be proved by affidavit;

68 (4) serving an attachment, 50 cents;

69 (5) each copy of an attachment, 15 cents;

70 (6) each copy of an inventory of property seized on  
 71 attachment, 15 cents;

72 (7) serving summons on garnishee, 50 cents;

73 (8) copy of any affidavit or other paper not otherwise

1 provided for, ten cents per folio;  
 2 (9) posting each notice, 15 cents;  
 3 (10) for travel to and from the place of service, when  
 4 necessary in serving any process or paper authorized to be  
 5 served by them, ten cents per mile;  
 6 (11) committing to prison, 50 cents;  
 7 (12) summoning a jury, \$1;  
 8 (13) writing a list of jurors, 15 cents;  
 9 (14) attending on a jury, 50 cents;  
 10 (15) on all sums collected on execution and paid over,  
 11 charged upon the judgment debtor, five percent;  
 12 (16) serving a writ of replevin, 50 cents;  
 13 (17) summoning and swearing appraisers and taking  
 14 appraisement, 50 cents;  
 15 (18) taking and approving security in any case, 25 cents.  
 16 A constable shall be allowed all reasonable and necessary  
 17 expenses actually paid out for food and lodging furnished by him \*  
 18 the constable for any prisoner, not to exceed \$1 per day while \*  
 19 having the prisoner in custody pending trial and while  
 20 conducting the prisoner to jail, together with the  
 21 transportation charges for the prisoner paid to a common  
 22 carrier. If adjournment is for longer than three days, the  
 23 prisoner shall be committed to the county jail.

357\*#13S

24 357.13 POLICE OFFICERS, FEES IN STATE CASES; ADVANCE  
 25 PAYMENT OF FEES TO PUBLIC OFFICIALS BY STATE OR COUNTY.  
 26 Subdivision 1. CITY POLICE; WITNESS FEES. No police  
 27 officer of any city shall receive any witness fee in a suit or  
 28 prosecution brought in the name of the state, but any county or  
 29 city may reimburse him the officer for expenses actually \*  
 30 incurred. \*

31 No change for subd 2

357\*#17S

32 357.17 NOTARIES PUBLIC.  
 33 The maximum fees to be charged and collected by a notary  
 34 public shall be as follows:  
 35 (1) For protest of nonpayment of note or bill of exchange  
 36 or of nonacceptance of such bill, where protest is legally  
 37 necessary, and copy thereof, \$1;  
 38 (2) For every other protest and copy, \$1;  
 39 (3) For making and serving every notice of nonpayment of  
 40 note or nonacceptance of bill and copy thereof, \$1;  
 41 (4) For any affidavit or paper for which provision is not  
 42 made herein, \$1 per folio, and 20 cents per folio for copies;  
 43 (5) For each oath administered, \$1;  
 44 (6) For acknowledgments of deeds and for other services  
 45 authorized by law, the legal fees allowed other officers for  
 46 like services;  
 47 (7) For recording each instrument required by law to be  
 48 recorded by him the notary, \$1 per folio. \*

357\*#22S

49 357.22 WITNESSES.  
 50 The fees to be paid to witnesses shall be as follows:  
 51 (1) For attending in any action or proceeding in any court  
 52 or before any officer, person, or board authorized to take the  
 53 examination of witnesses, \$10 for each day;  
 54 (2) For travel to and from the place of attendance, to be  
 55 estimated from his the witness's residence, if within the state, \*  
 56 or from the boundary line of the state where he the witness \*  
 57 crossed it, if without the state, 24 cents per mile.  
 58 No person is obliged to attend as a witness in any civil  
 59 case unless one day's attendance and travel fees are paid or  
 60 tendered him the witness in advance. \*

357\*#23S

61 357.23 WITNESS FEES OF OFFICERS OF MUNICIPALITIES.  
 62 No officer or employee of any city or county in this state  
 63 shall receive or be paid any sum as witness fees in any case in  
 64 which the state of Minnesota, the county, or the city, of which  
 65 he the witness is an officer or employee, is a party, if the \*  
 66 case be tried in the witness's city of which-he-is-a-resident \*  
 67 residence. \*

357\*#242S

68 357.242 PARENTS OF JUVENILES.  
 69 In any proceeding where a parent or guardian attends the  
 70 proceeding with a minor witness and the parent or guardian is  
 71 not himself a witness, one parent or guardian shall be \*



1 compensated in those cases where witness compensation is  
 2 mandatory under section 357.22, 357.24, or 357.241, and may be  
 3 compensated at the discretion of the judge when the minor is a  
 4 witness on behalf of a defendant in a criminal case or on behalf  
 5 of a juvenile in a juvenile court proceeding. The court shall  
 6 award no more than a combined total of \$40 to the parent or  
 7 guardian and the minor witness.

357\*#25S

8 357.25 EXPERT WITNESSES.

9 The judge of any court of record, before whom any witness  
 10 is summoned or sworn and examined as an expert in any profession  
 11 or calling, may ~~in his discretion~~ allow such fees or  
 12 compensation as ~~in his judgment~~ may be just and reasonable. \*

357\*#27S

13 357.27 CORONER JURORS.

14 Each juror sworn before a coroner at an inquest shall  
 15 receive \$3 for each day's attendance and ten cents for each mile  
 16 traveled in going to and returning from the site of the  
 17 inquest. The distance shall be computed by the usually traveled  
 18 route and paid out of the county treasury. The coroner shall  
 19 deliver to each juror a certificate for the number of days'  
 20 attendance and miles traveled for which ~~he~~ the juror is entitled  
 21 to compensation. Each juror sworn in any action pending before  
 22 any sheriff on a writ of inquiry, shall receive \$3, to be paid,  
 23 in the first instance in all civil actions, by the party calling  
 24 for the jurors. The certificate of the coroner for services  
 25 rendered as a juror before ~~him~~ the coroner shall be filed with  
 26 the county auditor, who shall draw ~~his~~ a warrant upon the county  
 27 treasurer for the amount. The certificate shall be sufficient  
 28 voucher for the issuance of the warrant. \*

357\*#28S

29 357.28 COURT COMMISSIONER.

30 Subdivision 1. FEES. The fees to be charged and  
 31 collected by a court commissioner shall be as follows, and no  
 32 other or greater fees shall be charged:

33 (1) For examining any petition, complaint, affidavit, or  
 34 any paper wherein an order is required, \$2.50;

35 (2) For making and entering an order on the same, \$1;

36 (3) For examining an alleged insane or inebriate person for  
 37 commitment, \$25;

38 (4) For hearing and deciding on the return of a writ of  
 39 habeas corpus, \$10 for each day necessarily occupied;

40 (5) For examination of judgment debtors in proceedings  
 41 supplementary to execution and for all disclosures in  
 42 garnishment proceedings, in writing, 25 cents per folio;

43 (6) For all other services rendered by ~~him~~ the  
 44 commissioner, the same fees as are allowed by law to other  
 45 officers for similar services. \*

46 No change for subd 2

357\*#29S

47 357.29 SERVICES NOT RENDERED; ILLEGAL FEES.

48 No judge, sheriff, or other officer, or any other person to  
 49 whom any fee or compensation is allowed by law for any service,  
 50 shall take or receive any other or greater fee or reward for the  
 51 service than allowed by law. No fee or compensation shall be  
 52 demanded or received by any officer or person for any service  
 53 unless it was actually rendered, except in the case of  
 54 prospective costs. Any person violating either of these  
 55 provisions is liable to the party aggrieved for treble the  
 56 damages sustained ~~by him~~. \*

357\*#31S

57 357.31 COPIES; ITEMIZED LIST; FEES UNIFORM.

58 The legal fees paid for certified copies of the depositions  
 59 of witnesses filed in any clerk's office, or any documents or  
 60 papers filed or recorded in any public office, necessarily used  
 61 on trial of a cause or on the assessment of damages, shall be  
 62 allowed in the taxation of costs. Any officer receiving fees  
 63 shall, on demand, furnish an itemized list and receipt the same  
 64 on payment. On refusal to do so, ~~he~~ the officer shall be liable  
 65 to the party paying the same for three times the amount paid. \*

357\*#32S

68 357.32 WITNESS IN CRIMINAL CASES; WHEN AND HOW PAID.

69 When it appears that any witness subpoenaed or required to  
 70 appear on behalf of the state has come from another state or

1 country or is indigent, the court may, by order upon the  
2 minutes, direct the county treasurer to pay the witness a  
3 reasonable sum for expenses. When a prosecution in the name of  
4 the state fails, or the defendant proves insolvent, escapes, or  
5 is unable to pay the fees when convicted, they shall be paid out  
6 of the county treasury, unless otherwise ordered by the court.  
7 The clerk of court upon request of the county attorney or the  
8 attorney general may issue subpoenas and compel the attendance  
9 of witnesses in behalf of the state or county without payment of  
10 fees in advance; and, in criminal cases, the witnesses for the  
11 defendant shall also be compelled to attend without payment of  
12 fees in advance, and failure to attend after being served with a  
13 subpoena shall subject any witness to be proceeded against in  
14 the same manner as provided by law in other cases where payment  
15 of fees is required to be paid in advance. The clerk of any  
16 court in which a witness has attended on behalf of the state in  
17 a civil action shall give the witness a certificate of  
18 attendance and travel, which entitles ~~him~~ the witness to receive \*  
19 the amount from the county treasurer.

357\*#33S

20 357.33 PUT IN COUNTY TREASURY.

21 Unless otherwise provided by law, every county official  
22 receiving a stated salary shall receive the same in full  
23 compensation for all services and expenses whatsoever, and  
24 shall, on the first Monday of each month, file with the county  
25 auditor a correct statement of all fees received ~~by-him~~, and \*  
26 turn the same into the county treasury.

357\*#39S

27 357.39 CLERKS, CITIES OF FIRST CLASS.

28 Notwithstanding any law or laws or parts of laws of the  
29 state of Minnesota to the contrary, the city clerk of each city  
30 of the first class in this state may and shall charge and  
31 collect fees for the use and benefit of the city, in amounts and  
32 for purposes as follows:

- 33 1. For filing any chattel mortgage, or duplicate or  
34 certified copy thereof, or assignment or partial release or  
35 satisfaction thereof, and indexing, entering and certifying to  
36 the date of filing same, for each instrument, 25 cents.
- 37 2. For filing reports of chattel mortgage foreclosure  
38 sale, and indexing, entering and certifying to the date of  
39 filing the same, for each instrument, 25 cents.
- 40 3. For filing any promissory note, or conditional contract  
41 of sale, or copy of either thereof, or memorandum of oral  
42 contract, or partial release or satisfaction of either thereof,  
43 and indexing and entering and certifying to the date of filing  
44 the same, for each instrument, 25 cents.
- 45 4. For filing statements of claims for motor vehicle  
46 liens, for each instrument, 25 cents.
- 47 5. For making and filing wolf bounty certificates, and for  
48 each certified copy of such certificates for each instrument, 25  
49 cents.
- 50 6. For filing notices of intention of attorneys to claim  
51 lien, and indexing, entering and certifying to the date of  
52 filing same, for each instrument, 25 cents.
- 53 7. For filing and indexing and entering powers of  
54 attorney, for each instrument, 25 cents.
- 55 8. For filing certified copy of execution and return of  
56 levy by officer on bulky personal property, for each instrument,  
57 25 cents.
- 58 9. For filing assignments of wages or salaries or orders  
59 and acceptances for wages or salaries, for each instrument or  
60 order, 25 cents.
- 61 10. For filing trust deeds containing chattel mortgage  
62 clauses or tenement leases containing chattel mortgage clauses,  
63 and indexing, entering and certifying to the date of filing the  
64 same, for each instrument, 25 cents.
- 65 11. For filing assignments of debts, 25 cents each.
- 66 12. For filing reports of proceedings for the sale of  
67 pledged personal property, for each report, 25 cents.
- 68 13. For all instruments except instruments specified in  
69 clause 5, the fee for certifying the same shall be 50 cents for  
70 each copy certified. If copies of any of the foregoing  
71 instruments are prepared by the clerk, ~~he~~ the clerk shall charge \*  
72 and collect an additional fee of ten cents for each one hundred \*  
73 words contained in each instrument furnished ~~by-him~~; provided,  
74 that the minimum fee for the furnishing of any such instrument

1 shall be the sum of \$1.

357\*#41S

2 357.41 CLERKS, CITIES OF FIRST CLASS IN COUNTIES OF  
3 300,000.

4 No change for subd 1

5 Subd. 2. ADDITIONAL FEES. For certifying each \*  
6 instrument ~~certified-by-such~~ the clerk ~~he~~ shall make a charge of \*  
7 \$1, and if copy of an instrument be prepared by, the clerk ~~he~~ \*  
8 shall charge an additional fee of 20 cents for each one hundred \*  
9 words contained in each copy prepared ~~by-him~~, the total charge \*  
10 thereof to be not less than \$2 nor more than \$5.

11 No change for subd 3

358\*#028S

12 358.028 LEGISLATORS, OFFICIAL SEALS.

13 Every member of the legislature, ~~so-long-as-he-remains~~ \*  
14 while in office and ~~continues-to-reside~~ residing in the district \*  
15 from which ~~he-was~~ elected, may ~~furnish-himself-with~~ have an \*  
16 official seal, in the form provided in section 358.03, with \*  
17 which ~~he-may~~ to authenticate ~~his~~ official acts provided for in \*  
18 section 358.15.

358\*#06S

19 358.06 TRUSTEES, REFEREES.

20 Unless otherwise provided by law, every executor,  
21 administrator, guardian, trustee, referee, arbitrator, viewer,  
22 assessor, appraiser, and other person appointed by or made  
23 responsible to the court in any action or proceeding, before  
24 entering upon ~~his~~ duties as such, shall take and subscribe the \*  
25 following oath:

26 "I, A.B., do swear that I will faithfully and justly  
27 perform all the duties of the office and trust which I now  
28 assume as (insert brief description of office), to the best of  
29 my ability. So help me God."

358\*#07S

30 358.07 FORMS OF OATH IN VARIOUS CASES.

31 An oath substantially in the following forms shall be  
32 administered to the respective officers and persons hereinafter  
33 named:

34 (1) To grand jurors:

35 "You each do swear that you will diligently inquire, and  
36 true presentment make, of all public offenses committed within  
37 this county of which you have legal proof; the counsel of the  
38 state and of yourself and fellows you will keep secret; you will  
39 present no person through malice or ill-will, nor leave any  
40 unrepresented through fear or favor, or the receipt or hope of  
41 reward, but will present things truly to the best of your  
42 understanding and according to law. So help you God."

43 (2) To petit jurors in civil actions:

44 "You each do swear that you will impartially try the issues  
45 in this case, and a true verdict give, according to law and the  
46 evidence given you in court; your own counsel and that of your  
47 fellows you will duly keep; you will say nothing to any person  
48 concerning the case, nor suffer any one to speak to you about  
49 it, and will keep your verdict secret until you deliver it in  
50 court. So help you God."

51 (3) To petit juries in criminal cases:

52 "You each do swear that, without respect of persons or  
53 favor of any ~~man~~ person, you will well and truly try, and true \*  
54 deliverance make, between the state of Minnesota and the  
55 defendant, according to law and the evidence given you in  
56 court. So help you God."

57 (4) To officers attending grand juries:

58 "You do swear that, as officer of the grand jury, you will  
59 keep their counsel and that of the state, and not disclose  
60 anything relative to their proceedings. So help you God."

61 (5) To same in charge of petit juries:

62 "You do swear that you will keep this jury together, and,  
63 so far as may be, secluded, so long as they shall remain in your  
64 charge; will suffer no one to communicate with or overhear them  
65 while deliberating upon their verdict; and will not by word or  
66 sign disclose, except to the court alone, anything that may come  
67 to your knowledge concerning their action in this case until  
68 they are duly discharged."

69 (6) Same, in charge during recess:

70 "You do swear that you will keep together this jury until  
71 they return into court, and that in the meantime you will suffer  
72 no one to speak to them, nor speak to them yourself, concerning

1 the cause on trial, or any matter relating thereto."  
2 (7) To witnesses: "You do swear that the evidence you  
3 shall give relative to the cause now under consideration shall  
4 be the whole truth, and nothing but the truth. So help you God."

5 (8) To interpreters:  
6 "You do swear that you will truly and impartially interpret  
7 to this witness the oath about to be administered to ~~him~~ the \*  
8 witness, and the testimony ~~he~~ the witness shall give relative to \*  
9 the cause now under consideration. So help you God."

10 (9) To attorneys:  
11 "You do swear that you will support the constitution of the  
12 United States and that of the state of Minnesota, and will  
13 conduct yourself as an attorney and counselor at law in an  
14 upright and courteous manner, to the best of your learning and  
15 ability, with all good fidelity as well to the court as to the  
16 client, and that you will use no falsehood or deceit, nor delay  
17 any person's cause for lucre or malice. So help you God."

18 (10) To affiants:  
19 "You do swear that the statements of this affidavit, by you  
20 subscribed, are true. So help you God."

358\*#08S

21 358.08 AFFIRMATION IN LIEU OF OATH.

22 If any person of whom an oath is required shall ~~declare~~ \*  
23 ~~that he has~~ claim religious scruples against taking the same, \*  
24 the word "swear" and the words "so help you God" may be omitted  
25 from the foregoing forms, and the word "affirm" and the words  
26 "and this you do under the penalties of perjury" shall be  
27 substituted therefor, respectively, and such person shall be  
28 considered, for all purposes, as having been duly sworn.

358\*#09S

29 358.09 BY WHOM AND HOW ADMINISTERED.

30 Any officer authorized by this chapter to take and certify  
31 acknowledgments may administer an oath, and, if the same be in  
32 writing, may certify the same under ~~his official~~ the officer's \*  
33 signature, and the seal of ~~his~~ office, if there be one, in the \*  
34 following form: "Subscribed and sworn to before me this  
35 ..... day of ....., 19..... ." The mode of  
36 administering an oath commonly practiced in the place where it  
37 is taken shall be followed, including, in this state, the  
38 ceremony of uplifting the hand.

358\*#10S

39 358.10 OFFICIALS MAY ADMINISTER, WHEN.

40 All persons holding office under any law of this state, or  
41 under the charter or ordinances of any municipal corporation  
42 thereof, including judges and clerks of election, and all  
43 ~~committeemen~~ committee members, commissioners, trustees, \*  
44 referees, appraisers, assessors, and all others authorized or  
45 required by law to act or report upon any matter of fact, shall  
46 have power to administer such oaths as they may deem necessary  
47 to the proper discharge of their respective duties.

358\*#11S

48 358.11 OATHS, WHERE FILED.

49 Except as otherwise provided by law, the oath required to  
50 be taken and subscribed by any person shall be filed as follows:

51 (1) If that of an officer of the state, whether elective or  
52 appointive, with the secretary of state;

53 (2) If of a county officer, or an officer chosen within or  
54 for any county, with the county auditor;

55 (3) If of a city officer, with the clerk or recorder of the  
56 municipality;

57 (4) If of a town officer, with the town clerk;

58 (5) If of a school district officer, with the clerk of the  
59 district;

60 (6) If of a person appointed by, or made responsible to, a  
61 court in any action or proceeding therein, with the clerk of  
62 such court;

63 (7) If that of a person appointed by any state, county, or  
64 other officer for a special service in connection with ~~his~~ \*  
65 official duties, with such officer.

66 If the person taking such oath be also required to give  
67 bond, the oath shall be attached to or endorsed upon such bond  
68 and filed therewith, in lieu of other filing.

358\*#25S

69 358.25 POWER GIVEN FOR TAKING ACKNOWLEDGMENTS FOR  
70 PROTESTING BILLS OF EXCHANGE.

71 Any person authorized to take acknowledgments or administer

1 oaths, who is at the same time an officer, director or  
 2 stockholder of a corporation, is hereby authorized to take  
 3 acknowledgments of instruments wherein such corporation is  
 4 interested, and to administer oaths to any officer, director, or  
 5 stockholder of such corporation as such, and to protest for  
 6 non-acceptance or non-payment bills of exchange, drafts, checks,  
 7 notes and other negotiable or non-negotiable instruments which  
 8 may be owned or held for collection by such corporation, as  
 9 fully and effectually as if he the person were not an officer,  
 10 director, or stockholder of such corporation. \*

359\*#02S

11 359.02 TERM, BOND, OATH, REAPPOINTMENT.  
 12 Every notary so commissioned shall hold office for six  
 13 years, unless sooner removed by the governor or the district  
 14 court; and, before entering upon the duties of his office, he \*  
 15 shall give a bond to the state in the sum of \$10,000, to be  
 16 approved by the governor, conditioned for the faithful discharge \*  
 17 of the duties of his office, which, with his the oath of office, \*  
 18 shall be filed with the secretary of state. Within ten days  
 19 before the expiration of his the commission he a notary may be \*  
 20 reappointed for a new term to commence and to be designated  
 21 in his the new commission as beginning upon the day immediately \*  
 22 following such expiration. The reappointment so made shall go  
 23 into effect and be valid although the appointing governor may  
 24 not be in the office of governor on said day. \*

359\*#03S

25 359.03 SEAL; REGISTER.  
 26 Subdivision 1. Every notary shall ~~provide-himself-with~~ get \*  
 27 an official seal, with which ~~he-shall~~ to authenticate his \*  
 28 official acts, and upon which shall be engraved the arms of this  
 29 state, the words "notarial seal," and the name of the county for  
 30 which ~~he-was~~ appointed. Such seal, with his the notary's \*  
 31 official register, shall be exempt from execution, and, on his \*  
 32 death or removal from office, such register shall be deposited  
 33 with the clerk of the district court of his the notary's county. \*

34 No change for subd 2 to 3

359\*#05S

35 359.05 DATE OF EXPIRATION OF COMMISSION AND NAME TO BE  
 36 ENDORSED.  
 37 Each notary public so appointed, commissioned, and  
 38 qualified, shall have power throughout this state to administer  
 39 all oaths required or authorized to be administered in this  
 40 state; to take and certify all depositions to be used in any of  
 41 the courts of this state; to take and certify all  
 42 acknowledgments of deeds, mortgages, liens, powers of attorney,  
 43 and other instruments in writing, and to receive, make out, and  
 44 record notarial protests.  
 45 Every notary public, except in cases provided in section  
 46 359.03, subdivision 3, taking an acknowledgment of an  
 47 instrument, taking a deposition, administering an oath, or  
 48 making a notarial protest, shall, immediately following his the \*  
 49 notary's signature to the jurat or certificate of \*  
 50 acknowledgment, endorse the date of the expiration of his the \*  
 51 commission; such endorsement may be legibly written, stamped, or  
 52 printed upon the instrument, but must be disconnected from the  
 53 seal, and shall be substantially in the following form: "My  
 54 commission expires ....., 19....." Except in cases  
 55 provided in section 359.03, subdivision 3, every notary public,  
 56 in addition to signing ~~his-name-to~~ the jurat or certificate of \*  
 57 acknowledgment, shall, immediately following his the signature \*  
 58 and immediately preceding his the official description, endorse \*  
 59 thereon his the notary's name with a typewriter or print the \*  
 60 same legibly with a stamp or with pen and ink; provided that the  
 61 failure so to endorse or print the name shall not invalidate any  
 62 jurat or certificate of acknowledgment.

359\*#061S

63 359.061 RECORD OF COMMISSION; CERTIFICATE.  
 64 The commission of every notary shall be recorded in the  
 65 office of the clerk of the district court of the county for \*  
 66 which-he-is-appointed of appointment, in a record kept for that \*  
 67 purpose. The clerk, when requested, shall certify to his \*  
 68 official acts in the manner and for the fees prescribed by  
 69 statute or court rule.

359\*#07S

70 359.07 NOTARY IN DETACHED COUNTY.  
 71 Subdivision 1. POWERS. In any county which has

1 heretofore been detached from another county of this state, and  
 2 which has been newly created and organized, any notary public  
 3 residing in such newly created and organized county, who was a  
 4 resident of the county from which the new county was detached  
 5 and created, shall have the same powers during the unexpired  
 6 term of ~~his~~ appointment as such notary public was authorized by \*  
 7 law to exercise under the commission issued to ~~him~~ the notary as \*  
 8 a resident of the county from which the new county was detached  
 9 and created and within which ~~he was originally appointed such~~ \*  
 10 the original appointment as notary public was made; and all acts \*  
 11 heretofore done by any such notary public, while residing in the  
 12 newly created and organized county, otherwise in conformity of  
 13 law, are hereby declared to be legal and valid and to the same  
 14 effect as if the notary public had been originally commissioned  
 15 as a resident of the newly created and organized county.

16 Subd. 2. RECORD OF COMMISSION. Such notary public so  
 17 residing in the newly created and organized county shall have  
 18 ~~his~~ the commission as such notary public recorded by the clerk \*  
 19 of the district court of the newly created and organized  
 20 county ~~in which he resides~~ of residence, or of the county to \*  
 21 which the newly created county is attached for judicial  
 22 purposes, as provided in section 359.061, and when so recorded  
 23 shall be entitled to the same certificate of and from the clerk  
 24 of the district court as provided in section 359.061.

25 Subd. 3. SEAL. Such notary shall, immediately upon  
 26 the adoption of this section, ~~provide himself with~~ get an \*  
 27 official seal, as provided in and in conformity with section  
 28 359.03.

359\*#071S

29 359.071 CHANGE OF RESIDENCE.

30 A notary public who, during ~~his~~ a term of office, \*  
 31 establishes residency in a county of this state other than the  
 32 county for which ~~he was~~ appointed, may file with the secretary \*  
 33 of state an affidavit identifying the county of current  
 34 residency, the county ~~for which he is appointed~~ of appointment \*  
 35 as notary public, and the date of change of residency. If the  
 36 affidavit is properly filed, the notary shall continue to have \*  
 37 the same powers during the unexpired term of ~~his~~ appointment as \*  
 38 if ~~he had not changed~~ there was no change of residence. No new \*  
 39 bond is required to be given to the state and the existing bond  
 40 shall remain valid until the expiration of the commission. The  
 41 notary public shall be entitled to use ~~his~~ the official seal for \*  
 42 the remainder of ~~his~~ the term. \*

359\*#08S

43 359.08 MISCONDUCT.

44 Any notary who shall exercise the duties of ~~his~~ office \*  
 45 after the expiration of ~~his~~ a term, or when otherwise \*  
 46 disqualified, shall be guilty of a misdemeanor.

359\*#12S

47 359.12 REMOVAL FROM OFFICE.

48 Every notary who shall charge or receive a fee or reward \*  
 49 for any act or service done or rendered ~~by him~~ under this \*  
 50 chapter greater than the amount allowed by law, or who \*  
 51 dishonestly or unfaithfully discharges ~~his~~ duties as notary, \*  
 52 shall, on complaint filed and substantiated as in other civil \*  
 53 cases in the district court of the county ~~in which he resides~~ of \*  
 54 residence, be removed from office by such court. The fact of \*  
 55 such removal shall thereupon be certified by the clerk to the  
 56 governor, and the person so removed shall thereafter be  
 57 ineligible to such office.

360\*#012S

58 360.012 SOVEREIGNTY.

59 No change for subd 1 to 2

60 Subd. 3. Flight in aircraft over the lands and water of  
 61 this state is lawful, unless at such low altitude as to  
 62 interfere with the then existing use to which the land or water,  
 63 or the space above the land or water, is put by the owner, or  
 64 unless so conducted as to be imminently dangerous or damaging to  
 65 persons or property lawfully in the land or water beneath. The  
 66 landing of an aircraft on the lands or waters of another,  
 67 without ~~his~~ the other's consent is unlawful, except in the case \*  
 68 of a forced landing. For damages caused by the forced landing,  
 69 however, the owner or lessee of the aircraft or the pilot shall  
 70 be liable as provided in subdivision 4.

71 Subd. 4. The owner of every aircraft which is operated  
 72 over the lands or waters of this state is absolutely liable for

1 injury or damage to persons or property on the land or water  
 2 beneath, caused by the ascent, descent, or flight of the  
 3 aircraft, or the dropping or falling of any object therefrom,  
 4 whether such owner was negligent or not, unless the injury or  
 5 damage is caused in whole or in part by the negligence of the  
 6 person injured, or of the owner or bailee of the property  
 7 damaged. If the aircraft is leased at the time of the injury or  
 8 damage to person or property, both the owner and lessee shall be  
 9 liable, and they may be sued jointly, or either or both of them  
 10 may be sued separately. A pilot who is not the owner or lessee  
 11 shall be liable only for the consequences of ~~his~~ the pilot's own \*  
 12 negligence. The injured person, or owner or bailee of the  
 13 damaged property, shall have a lien on the aircraft causing the  
 14 injury or damage to the extent of such injury or damage caused  
 15 by the aircraft or objects falling from it.

16 No change for subd 5 to 7

360\*#013S

17 360.013 DEFINITIONS.

18 No change for subd 1 to 11

19 Subd. 12. "Airman Aviation worker" means any individual \*  
 20 who engages, as the person in command, or as pilot, mechanic, or  
 21 member of the crew, in the navigation of aircraft while under  
 22 way and (excepting individuals employed outside the United  
 23 States, any individual employed by a manufacturer of aircraft,  
 24 aircraft engines, propellers, or appliances to perform duties as  
 25 inspector or mechanic in connection therewith, and any  
 26 individual performing inspection or mechanical duties in  
 27 connection with aircraft owned or operated by ~~him~~ that \*  
 28 individual) any individual who is directly in charge of the \*  
 29 inspection, maintenance, overhauling, or repair of aircraft  
 30 engines, propellers, or appliances; and any individual who  
 31 serves in the capacity of aircraft dispatcher or air-traffic  
 32 control-tower operator.

33 No change for subd 13 to 16

34 Subd. 17. "Air school" means any person engaged in giving,  
 35 or offering to give, instruction in aeronautics, either in  
 36 flying or ground subjects, or both, for or without hire or  
 37 reward, and advertising, representing, or holding ~~himself~~ \*  
 38 out as giving or offering to give such instructions. It does not  
 39 include any public school, the University of Minnesota, or any  
 40 institution of higher learning accredited by the North Central  
 41 Association of Colleges and Secondary Schools and approved by it  
 42 for carrying on collegiate work.

43 No change for subd 18

44 Subd. 19. "Aeronautics instructor" means any individual  
 45 engaged in giving instruction, or offering to give instruction,  
 46 in aeronautics, either in flying or ground subjects, or both,  
 47 for hire or reward, without advertising such occupation, without  
 48 calling facilities an "air school," or anything equivalent  
 49 thereto, and without employing or using other instructors. It  
 50 does not include any instructor in any public school of this  
 51 state, the University of Minnesota, or in any institution of  
 52 higher learning accredited by the North Central Association of  
 53 Colleges and Secondary Schools and approved for carrying on  
 54 collegiate work, while engaged in ~~his~~ duties as such instructor. \*

55 No change for subd 20 to 24

56 Subd. 25. "Structure" means any object constructed or \*  
 57 installed ~~by-man~~, including, but without limitation, buildings,  
 58 towers, smoke-stacks, and overhead transmission lines.

59 No change for subd 26 to 30

360\*#015S

60 360.015 COMMISSIONER; POWERS AND DUTIES.

61 Subdivision 1. GENERAL SUPERVISION. The  
 62 commissioner shall have general supervision over aeronautics  
 63 within this state. ~~He~~ The commissioner is empowered and \*  
 64 directed to encourage, foster, and assist in the development of  
 65 aeronautics in this state and to encourage the establishment of  
 66 airports and other air navigation facilities.

67 Subd. 2. COOPERATION WITH FEDERAL AND OTHER AGENCIES.

68 The commissioner shall cooperate with and assist the federal  
 69 government, the municipalities of this state, and others engaged  
 70 in aeronautics or the promotion of aeronautics and shall seek to  
 71 coordinate the aeronautical activities of these bodies. To this  
 72 end, the commissioner is empowered to confer with or to hold  
 73 joint hearings with any federal aeronautical agency in  
 74 connection with any matter arising under sections 360.011 to

1 360.076, or relating to the sound development of aeronautics,  
 2 and to ~~avail-himself~~ take advantage of the cooperation, \*  
 3 services, records, and facilities of such federal agencies, as  
 4 fully as may be practicable, in the administration and  
 5 enforcement of sections 360.011 to 360.076. The commissioner  
 6 shall reciprocate by furnishing ~~to-the-federal-agencies-his~~ \*  
 7 cooperation, services, records, and facilities, in so far as may  
 8 be practicable, to the federal agencies. The commissioner may \*  
 9 also contract for the presentation of educational and  
 10 informational programs that promote safety and interest in  
 11 aeronautics.

12 The commissioner shall report to the appropriate federal  
 13 agency all accidents in aeronautics in this state of which the  
 14 commissioner is informed. The commissioner shall also preserve,  
 15 protect, and prevent the removal of the component parts of any  
 16 aircraft involved in an accident being investigated by the  
 17 commissioner until a federal agency institutes an  
 18 investigation. The commissioner shall report the following to  
 19 the appropriate federal agency:

- 20 (1) all refusals by the commissioner to register federal
- 21 licenses, certificates, or permits;
- 22 (2) all revocations of certificates of registration, and
- 23 the reasons therefor; and
- 24 (3) all penalties of which the commissioner has knowledge
- 25 imposed upon ~~airmen~~ aviation workers for violations of the laws \*  
 26 of this state relating to aeronautics or for violations of the  
 27 rules, regulations, or orders of the commissioner.

28 Subd. 3. PROMULGATE RULES AND REGULATIONS. He The \*  
 29 commissioner may perform such acts, issue and amend such orders, \*  
 30 and make, promulgate, and amend such reasonable general or  
 31 special rules, regulations, and procedure and establish such  
 32 minimum standards, consistent with the provisions of sections  
 33 360.011 to 360.076, as ~~he~~ the commissioner shall deem necessary \*  
 34 to carry out the provisions of sections 360.011 to 360.076, and  
 35 to perform ~~his~~ duties thereunder: all commensurate with and for \*  
 36 the purpose of protecting and insuring the general public  
 37 interest and safety, the safety of persons receiving instruction  
 38 concerning, or operating, using, or traveling in, aircraft, and  
 39 of persons and property on land or water, and to develop and  
 40 promote aeronautics in this state. No rule or regulation of the  
 41 commissioner shall apply to airports or other air navigation  
 42 facilities owned or controlled by the federal government within  
 43 this state.

44 Whenever valid rules and regulations of the commissioner  
 45 and rules and regulations of a municipality are inconsistent,  
 46 the rules and regulations of the commissioner shall control and  
 47 the rules and regulations of the municipality are void in so far  
 48 as they are inconsistent with the rules and regulations of the  
 49 commissioner. Nothing herein contained shall be construed to  
 50 limit the right of a metropolitan airports commission created  
 51 under Laws 1943, Chapter 500, as amended, to make its own rules  
 52 and regulations governing the internal administrative operations  
 53 of an airport owned or operated by it as distinguished from  
 54 rules and regulations governing flight and flight operations  
 55 promulgated by the commissioner in the interests of safety.

56 No change for subd 4 to 5

57 Subd. 6. DESIGN STATE AIRWAY SYSTEM. He The \*  
 58 commissioner may designate, design, and establish, expand, or \*  
 59 modify a state airways system which will best serve the  
 60 interests of the state. He The commissioner may chart such \*  
 61 airways system and arrange for publication and distribution of  
 62 such maps and charts and notices and bulletins relating to such  
 63 airways as may be required in the public interest. He The \*  
 64 commissioner may make a charge for these sufficient to cover the \*  
 65 cost of printing or reproduction. The system shall be  
 66 supplementary to and coordinated in design and operation with  
 67 the federal airways system. It may include all types of air  
 68 navigation facilities which conform to federal safety standards.

69 Subd. 7. TECHNICAL SERVICES TO MUNICIPALITIES. He \*  
 70 The commissioner may, in so far as is reasonably possible, offer \*  
 71 the engineering or other technical services of the department,  
 72 at mutually agreed terms, to any municipality desiring them in  
 73 connection with the planning, acquisition, construction,  
 74 maintenance, zoning or operation or proposed planning,  
 75 acquisition, construction, maintenance, zoning or operation of  
 76 an airport or restricted landing area.



1 Subd. 8. SUGGEST LEGISLATION. He The commissioner \*  
 2 may draft and recommend necessary legislation to advance the  
 3 interests of the state in aeronautics and represent the state in  
 4 aeronautical matters before federal agencies and other state  
 5 agencies.

6 Subd. 9. INTERVENTION. He The commissioner may \*  
 7 participate as party plaintiff or defendant, or as intervenor,  
 8 on behalf of the state or any municipality, or resident thereof,  
 9 in any controversy having to do with any claimed encroachment by  
 10 the federal government or any foreign state upon any state or  
 11 individual rights pertaining to aeronautics.

12 Subd. 10. ENFORCEMENT; POLICE POWER; DEPUTIZE AIRPORT \*  
 13 MANAGERS. It shall be the duty of the commissioner, ~~his~~ the \*  
 14 commissioner's assistant, and all employees of the department of \*  
 15 transportation and every state, county, and municipal officer  
 16 charged with the enforcement of state and municipal laws to  
 17 enforce and assist in the enforcement of sections 360.011 to  
 18 360.076, and of all rules and regulations issued pursuant  
 19 thereto, and of all other laws of this state relating to  
 20 aeronautics, and, in the aid of such enforcement, general police  
 21 powers are hereby conferred upon the commissioner, ~~his~~ the \*  
 22 commissioner's assistant, and such of the employees of the \*  
 23 department as may be designated by ~~him~~ the commissioner to \*  
 24 exercise such powers. He The commissioner may also deputize \*  
 25 airports managers to enforce on the airports managed by them all  
 26 rules and regulations issued pursuant to the provisions of this  
 27 section, and general police powers are hereby conferred upon  
 28 such airport managers for the purposes of such enforcement. The  
 29 commissioner is further authorized, in the name of this state,  
 30 to enforce the provisions of sections 360.011 to 360.076, and  
 31 the rules and regulations issued pursuant thereto by injunction  
 32 in the courts of this state. Municipalities are authorized to  
 33 cooperate with the commissioner in the development of  
 34 aeronautics and aeronautics facilities in this state. The  
 35 commissioner may use the facilities and services of other  
 36 agencies of the state to the utmost extent possible, and such  
 37 agencies are authorized and directed to make available such  
 38 facilities and services.

39 Subd. 11. INVESTIGATIONS. The commissioner, ~~his~~ the \*  
 40 commissioner's assistant, or any employee of the department \*  
 41 designated by ~~him~~ the commissioner shall have the power to hold \*  
 42 investigations, inquiries, and hearings concerning matters  
 43 covered by the provisions of sections 360.011 to 360.076, and  
 44 orders, rules, and regulations of the commissioner and  
 45 concerning accidents in aeronautics within this state. All  
 46 hearings so conducted shall be open to the public. The  
 47 commissioner, ~~his~~ the commissioner's assistant, and every \*  
 48 employee of the department designated by ~~him~~ the commissioner to \*  
 49 hold any inquiry, investigations, or hearing shall have power to  
 50 administer oaths and affirmations, certify to all official acts,  
 51 issue subpoenas, and compel the attendance and testimony of  
 52 witnesses and the production of papers, books, and documents.  
 53 In case of failure to comply with any subpoena or order issued  
 54 under authority of sections 360.011 to 360.076, the  
 55 commissioner, or ~~his~~ the commissioner's authorized \*  
 56 representative, may invoke the aid of any court of this state of  
 57 general jurisdiction. The court may thereupon order the witness  
 58 to comply with the requirements of the subpoena or order or to  
 59 give evidence touching the matter in question. Any failure to  
 60 obey the order of the court may be punished by the court as a  
 61 contempt thereof.

62 Subd. 11a. AERONAUTICAL ACCIDENTS; BLOOD TESTS OF \*  
 63 ACCIDENT VICTIMS; CORONER TO REPORT DEATH. Every coroner or  
 64 other official performing like functions shall report in writing  
 65 to the department of transportation the death of any person  
 66 within ~~his~~ that official's jurisdiction as a result of an \*  
 67 accident involving an aircraft. Such report shall be made  
 68 within five days after such death. In case an aircraft's pilot  
 69 in command or ~~his~~ the co-pilot are killed in an aeronautical \*  
 70 accident, and if such death occurs within four hours after said  
 71 accident, then and in such cases the coroner or other official  
 72 performing like function shall examine the body and shall make  
 73 such tests as are necessary to determine the presence and  
 74 percentage concentration of alcohol, drugs and carbon monoxide,  
 75 if feasible, in the blood of the victim. This information shall  
 76 be included in a report submitted to the department of

1 transportation and shall be tabulated on an annual basis by the  
2 department. This information transmitted to the department may  
3 be used only for statistical purposes by the department which do  
4 not reveal the identity of the deceased.

5 The provisions hereof shall not be construed to limit the  
6 authority otherwise conferred by law on the coroner.

7 Subd. 12. REPORT OF INVESTIGATIONS; LIMITATIONS ON  
8 USE. In order to facilitate the making of investigations by  
9 the commissioner, in the interest of public safety and promotion  
10 of aeronautics, the public interest requires, and it is therefor  
11 provided, that the reports of investigations or hearings, or any  
12 part thereof, shall not be admitted in evidence or used for any  
13 purpose in any suit, action, or proceeding growing out of any  
14 matter referred to in said investigation, hearing, or report  
15 thereof, except in case of criminal or other proceedings  
16 instituted in behalf of the commissioner of this state under the  
17 provisions of sections 360.011 to 360.076, and other laws of  
18 this state relating to aeronautics, nor shall the commissioner,  
19 his the commissioner's assistant, or any employee of the \*  
20 department be required to testify to any facts ascertained in, \*  
21 or information gained by reason of, his official capacity, or be \*  
22 required to testify as an expert witness in any suit, action, or  
23 proceeding involving any aircraft. Subject to the foregoing \*  
24 provisions, the commissioner may in-his-discretion make \*  
25 available to appropriate federal and state agencies information  
26 and material developed in the course of such hearings and  
27 investigations.

28 No change for subd 13

29 Subd. 14. CONTRACTS. He The commissioner may enter \*  
30 into any contracts necessary to the execution of the powers \*  
31 granted him the commissioner by sections 360.011 to 360.076. \*

32 Subd. 15. EXCLUSIVE RIGHTS FORBIDDEN; LEASES  
33 PERMITTED. He The commissioner shall grant no exclusive \*  
34 right for the use of any airway, airport, restricted landing \*  
35 area, or other air navigation facility under his the \*  
36 commissioner's jurisdiction. This subdivision shall not prevent \*  
37 the making of leases in accordance with other provisions of \*  
38 sections 360.011 to 360.076.

39 No change for subd 16

40 Subd. 17. REPORT TO GOVERNOR. On or before October  
41 1 in every even-numbered year the commissioner shall make to the  
42 governor a full report of the proceedings of the department for  
43 the preceding two fiscal years, together with his the \*  
44 commissioner's recommendations pertaining to the affairs of the \*  
45 department. The governor shall transmit this report to the  
46 legislature by November 15 of each even-numbered year.

47 Subd. 18. CUSTODIAN OF RECORDS; ATTORNEY GENERAL  
48 DESIGNATED AS ATTORNEY. The commissioner shall be the  
49 custodian of and preserve the records of the department and of  
50 the official acts and determinations made by himself the \*  
51 commissioner or his predecessors in office. All of the files \*  
52 and records of the department shall, under reasonable  
53 regulations, be open to public inspection, and copies thereof  
54 certified by the commissioner as being true copies shall be  
55 received in evidence in any court in this state with the same  
56 force and effect as the originals. The attorney general shall  
57 be ex-officio attorney for the commissioner and shall give him \*  
58 the commissioner such legal counsel, advice, and assistance \*  
59 as he the commissioner may require from time to time. \*

60 No change for subd 19 to 20

360\*#016S

61 360.016 FEDERAL AID.

62 No change for subd 1

63 Subd. 2. ACCEPTANCE OF FEDERAL MONEYS. He The \*  
64 commissioner is authorized to accept, receive, and receipt for \*  
65 and disburse federal moneys and other moneys, either public or  
66 private, for and in behalf of this state, or any municipality  
67 thereof, for the planning, acquisition, construction,  
68 improvement, maintenance, and operation of airports and other  
69 air navigation facilities, whether such work is to be done by  
70 the state or by such municipalities, or jointly, aided by grants  
71 of aid from the United States, upon such terms and conditions as  
72 are or may be prescribed by the laws of the United States and  
73 any rules or regulations made thereunder. He The commissioner \*  
74 is authorized to act as agent of any municipality or \*  
75 municipalities acting jointly, upon the request of such

1 municipality or municipalities, in accepting, receiving,  
 2 receipting for and disbursing federal moneys, and other moneys  
 3 public or private, made available to finance, in whole or in  
 4 part, the planning, acquisition, construction, improvement,  
 5 maintenance or operation of a municipal airport or air  
 6 navigation facility; and if requested by such municipality or  
 7 municipalities may act as its or their agent in contracting for  
 8 and supervising such planning, acquisition, construction,  
 9 improvement, maintenance or operation; and all municipalities  
 10 are authorized to designate the commissioner as their agent for  
 11 the foregoing purposes. The commissioner, as principal on  
 12 behalf of the state, and any municipality on its own behalf,  
 13 subject to the provisions of section 360.0161 may enter into any  
 14 contracts, with each other or with the United States or with any  
 15 person, which may be required in connection with a grant or loan  
 16 of federal moneys for municipal airport or air navigation  
 17 facility purposes. All federal moneys accepted under this  
 18 section shall be accepted and transferred or expended by the  
 19 commissioner upon such terms and conditions as are prescribed by  
 20 the United States.

21 Subd. 3. CONTRACTS; LAW GOVERNING. He The \*  
 22 commissioner may enter into any contracts necessary to the \*  
 23 execution of powers granted by this act. All contracts for the  
 24 planning, acquisition, construction, improvement, maintenance,  
 25 and operation of airports, or other air navigation facilities,  
 26 made by the commissioner, either as the agent of this state or  
 27 as the agent of any municipality, shall be made pursuant to the  
 28 laws of this state governing the making of like contracts;  
 29 provided, that where the planning, acquisition, construction,  
 30 improvement, maintenance, and operation of any airport or other  
 31 air navigation facility is financed wholly or partially with  
 32 federal moneys, the commissioner, as agent of the state or of  
 33 any municipality thereof, may let contracts in the manner  
 34 prescribed by the federal authorities, acting under the laws of  
 35 the United States and any rules or regulations made thereunder,  
 36 notwithstanding any other state law to the contrary.

37 No change for subd 4

360\*#018S

38 360.018 AIRCRAFT, ~~AIRMEN~~ AVIATION WORKERS, AIRPORTS, AIR \*  
 39 INSTRUCTION; REGULATION.

40 Subdivision 1. GENERALLY. The general public  
 41 interest and safety, the safety of persons receiving instruction  
 42 concerning or operating, using, or traveling in aircraft and of  
 43 persons and property on the ground, and the interest of  
 44 aeronautical progress requiring that aircraft operated within  
 45 this state should be airworthy, that ~~airmen~~ aviation workers and \*  
 46 those engaged in air instruction should be properly qualified,  
 47 and that airports, restricted landing areas, and air navigation  
 48 facilities should be suitable for the purposes for which they  
 49 are designed; the purposes of sections 360.013 to 360.075,  
 50 requiring that the commissioner should be enabled to exercise  
 51 the powers of supervision therein granted; and the advantages of  
 52 uniform regulation making it desirable that aircraft operated  
 53 within this state should conform with respect to design,  
 54 construction and airworthiness to the standards prescribed by  
 55 the United States government with respect to civil aircraft  
 56 subject to its jurisdiction and that persons engaging in  
 57 aeronautics within this state should have the qualifications  
 58 necessary for obtaining and holding appropriate airman  
 59 certificates of the United States, the commissioner is  
 60 authorized:

61 (1) To require the registration annually of federal  
 62 licenses, permits, or certificates of civil aircraft engaged in  
 63 air navigation within this state, and to issue certificates of  
 64 such registration, which certificates may be the same as the  
 65 certificates issued pursuant to section 360.59, subdivision 3.  
 66 The application for registration made pursuant to sections  
 67 360.54 to 360.67 shall be considered as the application for  
 68 registration required by this section.

69 (2) The certificates of registration of aircraft issued  
 70 pursuant to this section shall constitute licenses of such  
 71 aircraft for operations within this state to the extent  
 72 permitted by the federal licenses, certificates, or permits so  
 73 registered. The application for registration shall contain such  
 74 information as the commissioner may by rule, regulation, or  
 75 order prescribe. The first application for registration made in

1 this state shall be verified by the applicant. The second and  
2 succeeding applications for registration need not be verified.  
3 Each application for registration of aircraft shall be made as  
4 required by sections 360.54 to 360.67.

5 (3) To license any person engaged in commercial operations  
6 in accordance with rules and regulations to be adopted by the  
7 commissioner and to annually renew such a license. The rules  
8 and regulations adopted hereunder shall provide for:

9 (a) compliance with all requirements of the United States  
10 government relating to permits or certificates governing  
11 aircraft and ~~airmen~~ aviation workers; and \*

12 (b) compliance with all laws of the state of Minnesota and  
13 rules and regulations of any state department or agency  
14 promulgated thereunder.

15 The fee for an original license or renewal license is \$30.

16 (4) To approve airport and restricted landing area sites  
17 and to license airports, restricted landing areas, or other air  
18 navigation facilities, in accordance with rules and regulations  
19 to be adopted by the commissioner, and to renew such licenses.  
20 Licenses granted under this subdivision or under any prior law  
21 shall be renewed annually or every three years upon payment of  
22 the fee therefor, and licenses shall be granted for airports and  
23 restricted landing areas which were being operated under a  
24 license on the 1st day of July 1943, without requirements of a  
25 certificate of approval, unless the commissioner shall  
26 reasonably determine, after a public hearing to be called by ~~him~~ \*  
27 the commissioner and held in the same manner and upon the same \*  
28 notice as is provided for hearings upon certificates of approval  
29 or original licenses, that the operation of such airport or  
30 restricted landing area is hazardous to persons operating,  
31 using, or traveling in aircraft or to persons and property on  
32 the ground. ~~He~~ The commissioner shall make no charge for \*  
33 approval certificates of proposed property acquisition for  
34 airport or restricted landing area purposes. The fee for the  
35 issuance of each original license for an airport or restricted  
36 landing area is \$15 per year and \$40 for three years.

37 (5) To suspend or revoke any license or certificate of  
38 registration of an aircraft or licensee of commercial operations  
39 issued by ~~him~~ the commissioner, or to refuse to issue any such \*  
40 license or certificate of registration, ~~when-he-shall~~ on \*  
41 ~~reasonably determine~~ determining that any aircraft is not \*  
42 airworthy or that any licensee of commercial operations is not  
43 qualified has engaged in advertising by means of false or  
44 deceptive statements, has been found guilty of gross  
45 incompetency or gross negligence, has been found guilty of  
46 fraud, dishonesty, forgery, or theft, has willfully violated the  
47 provisions of sections 360.013 to 360.075, the rules and  
48 regulations prescribed pursuant thereto, or any other statute of  
49 this state relating to aeronautics, or any act of congress or  
50 any rule or regulation promulgated pursuant thereto, is addicted  
51 to the use of narcotics or other habit forming drug or to the  
52 excessive use of intoxicating liquor, has made any false  
53 statement in any application for registration of a federal  
54 license, certificate or permit, or has been guilty of other  
55 conduct, acts, or practices dangerous to the public safety and  
56 the safety of those engaged in aeronautics.

57 Subd. 2. OPERATIONS UNLAWFUL. Except as hereinafter  
58 provided, it shall be unlawful for any person to operate or  
59 cause or authorize to be operated any civil aircraft within this  
60 state unless such aircraft has an appropriate effective license,  
61 certificate, or permit issued by the United States government  
62 which has been registered with the commissioner and such  
63 registration with the commissioner is in full force and effect,  
64 and it shall be unlawful for any person to engage in aeronautics  
65 as an ~~airman~~ aviation worker in this state ~~unless-he-has~~ without \*  
66 an appropriate effective airman's license, certificate or permit  
67 issued by the United States government authorizing ~~him~~ the \*  
68 person to engage in the particular class of aeronautics in \*  
69 which ~~he-is~~ engaged. \*

70 Subd. 3. EXCEPTIONS TO REGISTRATION REQUIREMENTS.

71 The provisions of subdivision 1, paragraphs (1) and (2), and  
72 subdivision 2 shall not apply to:

73 (1) An aircraft which has been licensed by a foreign  
74 country with which the United States has a reciprocal agreement  
75 covering the operations of such licensed aircraft;

76 (2) An aircraft which is owned by a nonresident of this

1 state who is lawfully entitled to operate such aircraft in the  
2 state of ~~his~~ residence; \*

3 (3) An aircraft engaged principally in commercial flying  
4 constituting an act of interstate or foreign commerce;

5 (4) An aircraft owned by, and used exclusively in the  
6 service of, any government or any political subdivision thereof,  
7 including the government of the United States, any state,  
8 territory, or possession of the United States, or the District  
9 of Columbia, which is not engaged in carrying persons or  
10 property for commercial purposes;

11 (5) An ~~airman~~ aviation worker operating an aircraft owned \*  
12 by, and used exclusively in the service of, any government or  
13 any political subdivision thereof, including the government of  
14 the United States, any state, territory, or possession of the  
15 United States, or the District of Columbia, which is not engaged  
16 in carrying persons or property for commercial purposes;

17 (6) An ~~airman~~ aviation worker operating any aircraft \*  
18 licensed by a foreign country with which the United States has a  
19 reciprocal agreement covering the operation of such licensed  
20 aircraft;

21 (7) Persons operating model aircraft, nor to any person  
22 piloting an aircraft which is equipped with fully functioning  
23 dual controls when a licensed instructor is in full charge of  
24 one set of said controls and such flight is solely for  
25 instruction or for the demonstration of said aircraft to a bona  
26 fide prospective purchaser;

27 (8) A nonresident operating aircraft in this state who is  
28 lawfully entitled to operate aircraft in the state of ~~his~~ \*  
29 residence;

30 (9) An ~~airman~~ aviation worker while operating or taking \*  
31 part in the operation of an aircraft engaged principally in  
32 commercial flying constituting an act of interstate or foreign  
33 commerce.

34 Subd. 4. EXHIBITION OF LICENSES AND CERTIFICATES.

35 The federal license, certificate, or permit, and the evidence of  
36 registration in this or another state, if any, required for an  
37 ~~airman~~ aviation worker shall be kept in the personal possession \*  
38 of the ~~airman~~ aviation worker when ~~he-is~~ operating within this \*  
39 state and must be presented for inspection upon the demand of  
40 any passenger, any peace officer of this state, or the  
41 commissioner, ~~his~~ the commissioner's assistant, or any employee \*  
42 of the department, or any official, manager, or person in charge  
43 of any airport in this state upon which ~~he~~ the aviation worker \*  
44 shall land, or upon the reasonable request of any other person.  
45 The federal aircraft license, certificate, or permit, and the  
46 evidence of registration in this or another state, if any,  
47 required for aircraft must be carried in every aircraft  
48 operating in this state at all times and must be conspicuously  
49 posted therein where it may readily be seen by passengers or  
50 inspectors and must be presented for inspection upon the demand  
51 of any passenger, any peace officer of this state, the  
52 commissioner, ~~his~~ the commissioner's assistant, or any employee \*  
53 of the department, or any official, manager, or person in charge  
54 of any airport in this state upon which it shall land, or upon  
55 the reasonable request of any person.

56 Subd. 5. AIR INSTRUCTION WITHOUT LICENSE, PERMIT OR  
57 CERTIFICATE. It shall be unlawful for any person to engage  
58 in commercial operations or to act as an aeronautics instructor  
59 in this state ~~unless-he-has~~ without having all required \*  
60 licenses, certificates or permits of the commissioner and of the  
61 United States government.

62 No change for subd 6

63 Subd. 7. HEARINGS ON APPLICATION FOR CERTIFICATES AND  
64 LICENSES. Whenever the commissioner makes an order granting  
65 or denying a certificate of approval of an airport or a  
66 restricted landing area, or an original license to use or  
67 operate an airport, restricted landing area, or other air  
68 navigation facility, and the applicant or any interested  
69 municipality, within 15 days after notice of such order has been  
70 sent the applicant by certified mail, demands a public hearing,  
71 or whenever the commissioner desires to hold a public hearing  
72 before making an order, such a public hearing in relation  
73 thereto shall be held in the municipality applying for the  
74 certificate of approval or license or, in case the application  
75 was made by anyone other than a municipality, at the county seat  
76 of the county in which the proposed airport, restricted landing

1 area, or other air navigation facility is proposed to be  
2 situated, at which hearing parties in interest and other persons  
3 shall have an opportunity to be heard. Notice of the hearing  
4 shall be published by the commissioner in a legal newspaper of  
5 general circulation in the county in which the hearing is to be  
6 held, at least 15 days prior to the date of hearing. After a  
7 proper and timely demand has been made, the order shall be  
8 stayed until after the hearing, when the commissioner may  
9 affirm, modify, or reverse it, or make a new order. If no  
10 hearing is demanded as herein provided, the order shall become  
11 effective upon the expiration of the time permitted for making a  
12 demand. Where a certificate of approval of an airport or  
13 restricted landing area has been issued by the commissioner, ~~he~~ \*  
14 the commissioner may grant a license for operation and use, and \*  
15 no hearing may be demanded thereon; provided, however, and  
16 subject to the provisions of section 473.622, as amended, should  
17 the airport for which a license is applied lie within the area  
18 under the jurisdiction of any corporation organized and existing  
19 under sections 473.601 to 473.679, the commissioner, before  
20 issuing the first license for the operation of said airport,  
21 shall forthwith serve notice in writing of the application,  
22 together with a copy thereof to the said corporation. Within 15  
23 days after service of such notice said corporation shall serve  
24 written notice upon the commissioner whether or not it regards  
25 the acquisition and/or operation of said airport as constituting  
26 a hazard to the safe operation of an airport or airports owned  
27 or operated by it. If in the opinion of the corporation it does  
28 not constitute such a hazard, the commissioner may thereafter  
29 proceed in the matter of granting or refusing to grant a license  
30 in accordance with and pursuant to the provisions of this act.  
31 If the corporation, however, be of the opinion that the  
32 acquisition and/or operation of such airport would create such a  
33 hazard, then the commissioner shall set a time and place for a  
34 joint hearing upon the application for license and for consent  
35 to or approval by the corporation of the acquisition and/or  
36 operation of said airport, which hearing shall be held within 45  
37 days after the service of such notice upon the applicant, the  
38 corporation and other interested parties, unless such time shall  
39 be extended by consent of all interested parties. At said  
40 hearing the corporation shall offer such evidence as it deems  
41 material to sustain its contention that the acquisition and/or  
42 operation of said airport would create such a hazard.  
43 Thereafter other interested parties supporting the view of the  
44 corporation shall be heard; and thereafter the applicant and  
45 other interested parties supporting applicant's view or their  
46 independent views shall be heard, and shall offer such evidence  
47 as they deem material to sustain their respective views and  
48 contentions. Each party shall have an opportunity of offering  
49 rebuttal testimony or rebuttal evidence. Within ten days after  
50 the close of the hearing the corporation shall make its order in  
51 writing approving or refusing to approve the acquisition and/or  
52 operation of said airport, provided that if the order is one  
53 disapproving, it must be based solely upon the grounds that the  
54 acquisition and/or operation of said airport would constitute a  
55 hazard to the safe operation of an airport or airports owned or  
56 operated by it or presently to be constructed or being  
57 constructed to be operated by it, and its order shall set forth  
58 its findings of fact and its reasons for the conclusion reached.

59 The provisions of this proviso shall apply only to  
60 securing the first approval or disapproval of the establishment  
61 and operation of said airport or restricted landing area and  
62 once the same shall have been approved by the corporation  
63 renewal licenses may be issued therefor by the commissioner of  
64 transportation without notice to the corporation.

65 Subd. 8. STANDARDS FOR ISSUING CERTIFICATES OF APPROVAL  
66 AND LICENSES. In determining whether ~~he shall to~~ \*  
67 a certificate of approval or license for the use or operation of  
68 any proposed airport or restricted landing area, the  
69 commissioner shall take into consideration its proposed  
70 location, size, and layout, the relationship of the proposed  
71 airport or restricted landing area to a comprehensive plan for  
72 state-wide and nation-wide development, whether there are safe  
73 areas available for expansion purposes, whether the adjoining  
74 area is free from obstructions based on a proper glide ratio,  
75 the nature of the terrain, the nature of the uses to which the  
76 proposed airport or restricted landing area will be put, and the

1 possibilities for future development.

2 No change for subd 9

3 Subd. 10. REVOCATION OF CERTIFICATE OF APPROVAL AND  
4 LICENSES. The commissioner is empowered to suspend or revoke  
5 any certificate of approval or license issued by ~~him-when-he~~  
6 ~~shall-determine~~ the commissioner upon determining that an  
7 airport, restricted landing area, or other air navigation  
8 facility is not being maintained or used in accordance with the  
9 provisions of sections 360.011 to 360.076, and the rules and  
10 regulations lawfully promulgated pursuant thereto.

\*  
\*

11 Subd. 11. EXAMINATION OF PREMISES. To carry out the  
12 provisions of sections 360.011 to 360.076, the commissioner, ~~his~~  
13 the commissioner's assistant, the employees of the department,  
14 and any officers, state or municipal, charged with the duty of  
15 enforcing sections 360.011 to 360.076, may inspect and examine  
16 at reasonable hours any premises, and the buildings and other  
17 structures thereon, where airports, restricted landing areas,  
18 air schools, flying clubs, or other air navigation facilities or  
19 aeronautical activities are operated or carried on.

\*  
\*

360\*#019S

20 360.019 ORDERS OF COMMISSIONER; REVIEW.

21 Subdivision 1. REFUSALS; FINDINGS OF FACT;  
22 REQUIREMENTS. In any case where the commissioner refuses to  
23 issue a certificate of approval of or license (or renewal of  
24 license) for an airport, restricted landing area, or other air  
25 navigation facility, or refuses to permit the registration of  
26 any license, certificate, or permit, or refuses to grant a  
27 license to an air school or to an aeronautics instructor in  
28 ground subjects, or in any case ~~where-he-shall-issue~~ issues any  
29 order requiring certain things to be done, or ~~revoking~~ revokes  
30 any license or certificate, ~~he~~ the commissioner shall set forth  
31 ~~his~~ the reasons therefor and shall state the requirements to be  
32 met before such approval will be given, registration permitted,  
33 license granted, or order modified or changed. Any order made  
34 by the commissioner pursuant to the provisions of sections  
35 360.011 to 360.076, shall be served upon the interested persons  
36 by certified mail or in person.

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37 No change for subd 2

360\*#021S

38 360.021 STATE AIRPORTS; ACQUISITION, OPERATION.

39 Subdivision 1. AUTHORITY TO ESTABLISH. The  
40 commissioner is authorized and empowered, on behalf of and in  
41 the name of this state, within the limitation of available  
42 appropriations, to acquire, by purchase, gift, devise, lease,  
43 condemnation proceedings, or otherwise, property, real or  
44 personal, for the purpose of establishing and constructing  
45 restricted landing areas and other air navigation facilities and  
46 to acquire in like manner, own, control, establish, construct,  
47 enlarge, improve, maintain, equip, operate, regulate, and police  
48 such restricted landing areas and other air navigation  
49 facilities, either within or without this state; and to make,  
50 prior to any such acquisition, investigations, surveys, and  
51 plans. ~~He~~ The commissioner may maintain, equip, operate,  
52 regulate, and police airports, either within or without this  
53 state. ~~He~~ The commissioner may maintain at such airports  
54 facilities for the servicing of aircraft and for the comfort and  
55 accommodation of air travelers. ~~He~~ The commissioner may dispose  
56 of any such property, airport, restricted landing area, or any  
57 other air navigation facility, by sale, lease, or otherwise, in  
58 accordance with the laws of this state governing the disposition  
59 of other like property of the state. ~~He~~ The commissioner may  
60 not acquire or take over any restricted landing area, or other  
61 air navigation facility without the consent of the owner. ~~He~~  
62 The commissioner shall not acquire any additional state airports  
63 nor establish any additional state-owned airports. ~~He~~ The  
64 commissioner may erect, equip, operate, and maintain on any  
65 airport buildings and equipment necessary and proper to  
66 maintain, and conduct such airport and air navigation facilities  
67 connected therewith. ~~He~~ The commissioner shall not expend money  
68 for land acquisition, or for the construction, improvement, or  
69 maintenance of airports, or for air navigation facilities for an  
70 airport, unless the governmental unit involved has or is  
71 establishing a zoning authority for that airport, and the  
72 authority has made a good faith showing that it is in the  
73 process of and will complete with due diligence, an airport  
74 zoning ordinance in accordance with sections 360.061 to

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1 360.074. Notwithstanding the foregoing prohibition, the  
2 commissioner may continue to maintain the state owned airport at  
3 Pine Creek.

4 Subd. 2. AIRPORT PROTECTION PRIVILEGES. Where  
5 necessary in order to provide unobstructed air space for the  
6 landing and taking off of aircraft utilizing airports and  
7 restricted landing areas acquired or operated under the  
8 provisions of sections 360.011 to 360.076, he the commissioner \*  
9 is hereby granted authority to acquire, in the same manner as is  
10 provided for the acquisition of property for airport purposes,  
11 easements through or other interests in air space over land or  
12 water, interests in airport hazards outside the boundaries of  
13 the airports or restricted landing areas, and such other airport  
14 protection privileges as are necessary to insure safe approaches  
15 to the landing areas of said airports and restricted landing  
16 areas, and the safe and efficient operation thereof. He The \*  
17 commissioner is also hereby authorized to acquire, in the same \*  
18 manner, the right of easement, for a term of years or  
19 perpetually, to place or maintain suitable marks for the daytime  
20 marking and suitable lights for the nighttime marking of airport  
21 hazards, including the right of ingress and egress to or from  
22 such airport hazards for the purpose of maintaining and  
23 repairing such lights and marks. This authority shall not be so  
24 construed as to limit the right, power, or authority of the  
25 state or any municipality to zone property adjacent to any  
26 airport or restricted landing area pursuant to any law of this  
27 state. The commissioner shall make maximum use of zoning and  
28 easements to eliminate runway and other potential airport  
29 hazards rather than land acquisition in fee.

30 No change for subd 3

31 Subd. 4. CONDEMNATION. He The commissioner may \*  
32 exercise the right of eminent domain, in the name of the state,  
33 in the manner provided by the laws of this state for the  
34 acquisition of real property for public purposes, for the  
35 purpose of acquiring any property which he the commissioner is \*  
36 herein authorized to acquire by condemnation. The fact that the  
37 property so needed has been acquired by the owner under power of  
38 eminent domain shall not prevent its acquisition by the exercise  
39 of the right of eminent domain herein conferred. For the  
40 purpose of making surveys and examinations relative to any  
41 condemnation proceedings, it shall be lawful to enter upon any  
42 land, doing no unnecessary damage. Notwithstanding the  
43 provisions of any other statute, or the charter of any  
44 municipality, he the commissioner may take possession of any \*  
45 such property so to be acquired at any time after the filing of  
46 the petition describing the same in condemnation  
47 proceedings. He The commissioner shall not be precluded from \*  
48 abandoning the condemnation of any such property in any case  
49 where possession thereof has not been taken.

50 Subd. 5. LEASES AND SALES. He The commissioner may \*  
51 lease for a term not exceeding 30 years such airports, or other  
52 air navigation facilities or real property acquired or set apart  
53 for airport purposes, to private parties, any municipal or state  
54 government or the national government, or any department of  
55 either thereof, for operation; and may lease or assign for a  
56 term not exceeding 30 years to private parties, any municipal or  
57 state government or the national government, or any department  
58 of either, for operation or use consistent with the purposes of  
59 this act, space, area, improvements, or equipment on such  
60 airports; may sell any part of such airports, other air  
61 navigation facilities, or real property to any municipal or  
62 state government, or to the United States or any department or  
63 instrumentality thereof, for aeronautical purposes or purposes  
64 incidental thereto; and may confer the privilege of concessions  
65 of supplying upon the airports goods, commodities, things,  
66 services, and facilities; provided that in each case in so doing  
67 the public is not deprived of its rightful, equal, and uniform  
68 use thereof.

69 Subd. 6. CHARGES AND RENTALS. He The commissioner \*  
70 shall have the authority to determine the charges or rental for  
71 the use of any properties and the charges for any service or  
72 accommodations under his the commissioner's control and the \*  
73 terms and conditions under which such properties may be used;  
74 provided that in all cases the public is not deprived of its  
75 rightful, equal, and uniform use of such property. Charges  
76 shall be reasonable and uniform for the same class of service



1 and established with due regard to the property and improvements  
2 used and the expenses of operation to the state. The state  
3 shall have and the commissioner may enforce liens, as provided  
4 by law for liens and the enforcement thereof, for repairs to or  
5 improvement or storage or care of any personal property, to  
6 enforce the payment of any such charges.

7 Subd. 7. CONTRACT WITH OWNERS OF EXISTING PRIVATELY  
8 OWNED AIRPORTS. ~~He~~ The commissioner may contract with the \*  
9 owners of existing privately-owned airports for the use,  
10 equipment, improvement, maintenance, management, and operation \*  
11 by ~~him~~ the commissioner of such airports, and thereafter use,  
12 equip, improve, maintain, manage, operate, regulate, and police  
13 them.

360\*#0215S

14 360.0215 COMMISSIONER MADE ATTORNEY TO ACCEPT PROCESS;  
15 EXTENSION OF TIME TO ANSWER.

16 The use and operation of an aircraft by a nonresident or  
17 ~~his~~ the nonresident's agent in the state of Minnesota or by a \*  
18 resident owner or ~~his~~ the resident owner's agent who has \*  
19 remained without the state continuously for 30 days prior to the  
20 commencement of an action against ~~him~~ the nonresident or \*  
21 absentee owner, shall be deemed an appointment by such \*  
22 nonresident or absentee of the commissioner of transportation,  
23 to be ~~his~~ the true and lawful attorney upon whom may be served \*  
24 all legal processes in any action or proceeding against ~~him~~ the \*  
25 nonresident or absentee growing out of such use or operation of \*  
26 an aircraft in the state of Minnesota, resulting in damages or  
27 loss to person or property, and said use or operation shall be a  
28 signification of ~~his~~ agreement that any such process in any \*  
29 action against ~~him~~ the nonresident or absentee which is so \*  
30 served shall be of the same legal force and validity as if \*  
31 served upon ~~him~~ the nonresident or absentee personally. Service \*  
32 of such process shall be made by serving a copy thereof upon the \*  
33 commissioner or by filing a copy in ~~his~~ the commissioner's \*  
34 office, together with the payment of a fee of \$2, and such \*  
35 service shall be sufficient service upon said nonresident or  
36 absentee, provided that notice of such service and a copy of the  
37 process are within ten days thereafter sent by mail by the  
38 plaintiff to the defendant at ~~his~~ the defendant's last known \*  
39 address, and that the plaintiff's affidavit of compliance with \*  
40 the provisions of this act are attached to the summons.

41 The court in which the action is pending may order such  
42 continuance as may be necessary to afford the defendant  
43 reasonable opportunity to defend any such action, not exceeding  
44 ninety days from the day of the filing of the action in such  
45 court. The fee of \$2 paid by the plaintiff to the commissioner  
46 at the time of service of such proceeding shall be taxed in ~~his~~ \*  
47 the plaintiff's costs if ~~he~~ the plaintiff prevails in the suit. \*  
48 The said commissioner shall keep a record of all such processes  
49 so served which shall show the day and hour of such service.

360\*#063S

50 360.063 ZONING REGULATIONS.

51 No change for subd 1

52 Subd. 3. JOINT AIRPORT ZONING BOARD. (1) Where an  
53 airport is owned or controlled by a municipality and an airport  
54 hazard area appertaining to the airport is located within the  
55 territorial limits of another county or municipality, the  
56 municipality owning or controlling the airport may request a  
57 county or municipality in which an airport hazard area is  
58 located:

59 (a) To adopt and enforce airport zoning regulations for the  
60 area in question that conform to standards prescribed by the  
61 commissioner pursuant to subdivision 4; or

62 (b) To join in creating a joint airport zoning board  
63 pursuant to clause (2). The owning or controlling municipality  
64 shall determine which of these actions it shall request, except  
65 as provided in clause (5) for the metropolitan airports  
66 commission. The request shall be made by certified mail to the  
67 governing body of each county and municipality in which an  
68 airport hazard area is located.

69 (2) Where an airport is owned or controlled by a  
70 municipality and an airport hazard area appertaining to the  
71 airport is located within the territorial limits of another  
72 county or municipality, the municipality owning or controlling  
73 the airport and the county or other municipality within which  
74 the airport hazard area is located may, by ordinance or

1 resolution duly adopted, create a joint airport zoning board,  
 2 which board shall have the same power to adopt, administer, and  
 3 enforce airport zoning regulations applicable to the airport  
 4 hazard area in question as that vested by subdivision 1 in the  
 5 municipality within which the area is located. A joint board  
 6 shall have as members two representatives appointed by the  
 7 municipality owning or controlling the airport and two from the  
 8 county or municipality, or in case more than one county or  
 9 municipality is involved two from each county or municipality,  
 10 in which the airport hazard is located, and in addition a  
 11 chairman chair elected by a majority of the members so appointed. \*

12 All members shall serve at the pleasure of their respective  
 13 appointing authority. Notwithstanding any other provision of  
 14 law to the contrary, if the owning and controlling municipality  
 15 is a city of the first class it shall appoint four members to  
 16 the board, and the chairman chair of the board shall be elected \*

17 from the membership of the board.

18 (3) If a county or municipality, within 60 days of  
 19 receiving a request from an owning or controlling municipality  
 20 pursuant to clause (1), fails to adopt, or thereafter fails to  
 21 enforce, the zoning regulations or fails to join in creating a  
 22 joint airport zoning board, the owning or controlling  
 23 municipality, or a joint airport zoning board created without  
 24 participation by the subdivisions which fail to join the board,  
 25 may itself adopt, administer, and enforce airport zoning  
 26 regulations for the airport hazard area in question. In the  
 27 event of conflict between the regulations and airport zoning  
 28 regulations adopted by the county or municipality within which  
 29 the airport hazard area is located, section 360.064, subdivision  
 30 2, applies.

31 (4) "Owning or controlling municipality," as used in this  
 32 subdivision, includes:

33 (a) A joint airport operating board created pursuant to  
 34 section 360.042 that has been granted all the powers of a  
 35 municipality in zoning matters under the agreement creating the  
 36 board;

37 (b) A joint airport operating board created pursuant to  
 38 section 360.042 that has not been granted zoning powers under  
 39 the agreement creating the board, provided that the board shall  
 40 not itself adopt zoning regulations nor shall a joint airport  
 41 zoning board created at its request adopt zoning regulations  
 42 unless all municipalities that created the joint operating board  
 43 join to create the joint zoning board; and

44 (c) The metropolitan airports commission established and  
 45 operated pursuant to chapter 473.

46 (5) The metropolitan airports commission shall request  
 47 creation of one joint airport zoning board for each airport  
 48 operated under its authority.

49 No change for subd 4 to 6

50 Subd. 6a. REVIEW OF VARIANCES GRANTED WHEN BOARD OF  
 51 ADJUSTMENT FAILS TO ACT. ~~When the commissioner receives~~ On \*  
 52 receiving notice that an airport zoning variance has been \*  
 53 granted by reason of the failure of a board of adjustment to act  
 54 on the variance as provided in section 360.067, subdivision  
 55 2, ~~he the commissioner~~ shall review the application and may \*  
 56 amend or rescind the variance ~~if he finds on finding~~ on finding that this \*  
 57 action is required to protect the public safety. No action of  
 58 the commissioner pursuant to this subdivision shall be effective  
 59 unless the commissioner notifies the applicant of that action  
 60 within 60 days after receiving notice that the variance was  
 61 granted. Any action taken by the commissioner pursuant to this  
 62 subdivision shall be subject to review by the courts as provided  
 63 in section 360.072.

64 Subd. 7. AIRPORT ZONING BOARD, EACH AIRPORT. Where  
 65 an airport is owned or operated by the state of Minnesota a  
 66 state airport zoning board shall be created for each airport,  
 67 which board shall have the same power to adopt, administer and  
 68 enforce airport zoning regulations applicable to the airport  
 69 hazard area of such airport as that vested by subdivision 1 in  
 70 the municipality. Each board shall consist of the commissioner  
 71 of transportation, or a member of ~~his~~ staff appointed by ~~him~~ the \*  
 72 commissioner, who shall be chairman chair, one member appointed \*  
 73 by the county board who may be a member of the county board, of  
 74 each county in which an airport hazard area is located and one  
 75 member appointed by the governing body of each municipality  
 76 located within the area to be zoned. If the area to be zoned is

1 located entirely within one county and no municipality is  
 2 located within the area to be zoned, then the duly designated  
 3 members shall select a third member who shall be a resident of  
 4 the county. The members of such board shall serve for a period  
 5 of three years beginning January 1 following their appointment  
 6 and until their successors are appointed and qualified. The  
 7 zoning regulations shall be adopted by an order of the board  
 8 signed by a majority of its members. Such order shall be  
 9 published once in a legal newspaper in the county in which the  
 10 airport is located and shall become effective ten days following  
 11 the date of its publication. A copy of such order shall be  
 12 filed in the office of the commissioner of transportation and  
 13 with the county recorder in each county in which a zoned area is  
 14 located. Any person appointed to serve on a state airport  
 15 zoning board shall be entitled to reimbursement for travel and  
 16 other necessary expenses ~~which shall be~~ incurred by him in  
 17 performance of his duties on such board which shall be paid from  
 18 the appropriations made to the department of transportation.

\*  
\*

19 No change for subd 8

360\*#065S

20 360.065 REGULATION, PROCEDURE FOR ADOPTION.

21 No change for subd 1

22 Subd. 2. REGULATIONS SUBMITTED TO COMMISSIONER.

23 Prior to adopting zoning regulations for an airport hazard area  
 24 under sections 360.011 to 360.076, the municipality, county, or  
 25 joint airport zoning board which is to adopt the regulations  
 26 shall submit its proposed regulations to the commissioner in  
 27 order that the commissioner may determine whether it conforms to  
 28 the standards prescribed by him the commissioner. The  
 29 commissioner shall immediately examine the proposed regulations  
 30 and report to the municipality, county, or joint airport zoning  
 31 board his the commissioner's approval, or objections, if any.  
 32 If objections are made by him the commissioner on the ground  
 33 that the regulations do not conform to the standards prescribed  
 34 by him the commissioner for the class of airport involved, the  
 35 municipality, county, or joint zoning board shall make  
 36 amendments as are necessary to meet the objections unless it  
 37 demonstrates that the social and economic costs of restricting  
 38 land uses in accordance with the standards outweigh the benefits  
 39 of a strict application of the standards. The governing body of  
 40 the municipality or county or the joint airport zoning board  
 41 shall not adopt the regulations or take other action until the  
 42 proposed regulations are approved by the commissioner. The  
 43 commissioner may approve local zoning ordinances that are more  
 44 stringent than the standards. A copy of the regulations as  
 45 adopted shall be filed with the county recorder in each county  
 46 in which the zoned area is located.

\*  
\*  
\*  
\*

47 Substantive rights existing prior to the passage of this  
 48 subdivision and previously exercised are not affected by the  
 49 filing of the regulations.

360\*#067S

50 360.067 PERMITS, VARIANCES.

51 No change for subd 1

52 Subd. 2. VARIANCES. Any person desiring to erect

53 any structure, or increase the height of any structure, or  
 54 permit the growth of any tree, or otherwise use his the person's  
 55 property in violation of airport zoning regulations adopted  
 56 under chapter 360, may apply to the board of adjustment,  
 57 hereinafter provided for, for a variance from the zoning  
 58 regulations in question. If a person submits an application for  
 59 a variance by certified mail to the members of the board and the  
 60 board fails to grant or deny the variance within four months  
 61 after the last member receives the application, the variance  
 62 shall be deemed to be granted by the board. When the variance  
 63 is granted by reason of the failure of the board to act on the  
 64 variance, the person receiving the variance shall notify the  
 65 board and the commissioner of transportation by certified mail  
 66 that the variance has been granted. The applicant shall include  
 67 a copy of the original application for the variance with this  
 68 notice to the commissioner. The variance shall be effective 60  
 69 days after this notice is received by the commissioner subject  
 70 to any action taken by the commissioner pursuant to section  
 71 360.063, subdivision 6. Such variances shall be allowed  
 72 where a literal application or enforcement of the regulations  
 73 would result in practical difficulty or unnecessary hardship and  
 74 the relief granted would not be contrary to the public interest

\*

1 but do substantial justice and be in accordance with the spirit  
 2 of the regulations and chapter 360; provided, any variance may  
 3 be allowed subject to any reasonable conditions that the board  
 4 of adjustment may deem necessary to effectuate the purposes of  
 5 Laws 1945, Chapter 303.

6 No change for subd 3

7 Subd. 4. ADMINISTRATIVE AGENT, APPOINTMENT. In the  
 8 case of an airport owned or operated by the state, the state  
 9 airport zoning board adopting the zoning regulations for such  
 10 airport, or the commissioner of transportation in case the  
 11 zoning regulations are adopted by ~~him~~ the commissioner as  
 12 provided herein, shall appoint a local governmental official of  
 13 a governmental unit in which the airport hazard area is located  
 14 as the administrative agent. The governmental official so  
 15 appointed is hereby authorized and directed as part of ~~his~~  
 16 official duties to exercise the powers and duties of the  
 17 administrative agency as described in sections 360.067 and  
 18 360.069.

360\*#071S

19 360.071 BOARD OF ADJUSTMENT.

20 No change for subd 1 to 3

21 Subd. 4. RULES AND REGULATIONS. The board shall  
 22 adopt rules in accordance with the provisions of the ordinance  
 23 or resolution by which it was created. Meetings of the board  
 24 shall be held at the call of the chairman chair and at such  
 25 other times as the board may determine. The chairman chair, or  
 26 ~~in-his-absence if absent~~, the acting chairman chair, may  
 27 administer oaths and compel the attendance of witnesses. All  
 28 hearings of the board shall be public. The board shall keep  
 29 minutes of its proceedings, showing the vote of each member upon  
 30 each question, or, if absent or failing to vote, indicating such  
 31 fact, and shall keep records of its examinations and other  
 32 official actions, all of which shall immediately be filed in the  
 33 office of the board and shall be a public record. Upon their  
 34 appointment the members of any board of adjustment shall select  
 35 a chairman chair to act at the pleasure of the board.

360\*#072S

36 360.072 JUDICIAL REVIEW.

37 No change for subd .1

38 Subd. 6. ALLOWANCE OF COSTS. Costs shall not be  
 39 allowed against the board of adjustment or the commissioner  
 40 unless it appears to the court that ~~it~~ the board or ~~he~~ the  
 41 commissioner acted with gross negligence, in bad faith, or with  
 42 malice, in making the decision appealed from.

43 No change for subd 7

360\*#075S

44 360.075 VIOLATIONS, PENALTIES.

45 Subdivision 1. MISDEMEANOR. Every person who:

46 (1) Operates an aircraft either on or over land or water in  
 47 this state without the consent of the owner of such aircraft; or

48 (2) Operates, or attempts to operate, any aircraft in this  
 49 state while under the influence of intoxicating liquor or of any  
 50 narcotic or other habit-forming drug; or

51 (3) Knowingly permits any individual who may be under the  
 52 influence of intoxicating liquor or of any narcotic or other  
 53 habit-forming drug to operate any aircraft owned by or in the  
 54 custody or control of such person ~~or-in-his-custody-or-control~~;  
 55 or

56 (4) Operates aircraft while in the possession of any  
 57 federal license, certificate, or permit or any certificate of  
 58 registration issued by the transportation department of this  
 59 state, or displays, or causes or permits to be displayed, such  
 60 federal license, certificate, or permit or such state  
 61 certificate of registration, knowing either to have been  
 62 cancelled, revoked, suspended, or altered; or

63 (5) Lends to, or knowingly permits the use of by, one not  
 64 entitled thereto of any federal airman's or aircraft license,  
 65 certificate, or permit, or any state ~~airman's~~ aviation worker's  
 66 or aircraft certificate of registration issued to ~~him~~ that  
 67 person; or

68 (6) Displays or represents as ~~his~~ the person's own any  
 69 federal airman's or aircraft license, certificate, or permit or  
 70 any state ~~airman's~~ aviation worker's or aircraft certificate of  
 71 registration not issued to ~~him~~ that person; or

72 (7) Tampers with, climbs upon or into, makes use of, or  
 73 navigates any aircraft without the knowledge or consent of the

1 owner or person having control thereof, whether while the same  
2 is in motion or at rest, or hurls stones or any other missiles  
3 at aircraft, or the occupants thereof, or otherwise damages or  
4 interferes with the same, or places upon any portion of any  
5 airport any object, obstruction, or other device tending to  
6 injure aircraft or parts thereof; or

7 (8) Uses a false or fictitious name, gives a false or  
8 fictitious address, knowingly makes any false statement or  
9 report, or knowingly conceals a material fact, or otherwise  
10 commits a fraud in any application or form required under the  
11 provisions of sections 360.011 to 360.076, or by any rules,  
12 regulations, or orders of the commissioner; or

13 (9) Operates any aircraft in such a manner as to indicate  
14 either a willful or a wanton disregard for the safety of persons  
15 or property; or

16 (10) Carries on or over land or water in this state in an  
17 aircraft other than a public aircraft any explosive substance  
18 except as permitted by the Federal Explosives Act, being the Act  
19 of October 6, 1917, as amended by P.L. 775, 77th Congress,  
20 approved November 24, 1942; or

21 (11) Discharges a gun, pistol, or other weapon in or from  
22 any aircraft in this state except as the hunting of certain wild  
23 animals from aircraft may be permitted by other laws of this  
24 state, or unless he the person is the pilot or officer in \*  
25 command of the aircraft or a peace officer or a member of the  
26 military or naval forces of the United States, engaged in the  
27 performance of his duty; or \*

28 (12) Carries in any aircraft, other than a public aircraft,  
29 any shotgun, rifle, pistol, or small arms ammunition except in  
30 the manner in which such articles may be lawfully carried in  
31 motor vehicles in this state, or ~~unless he~~ is a person excepted \*  
32 from the provisions of clause (11); or

33 (13) Engages in acrobatic or stunt flying without being  
34 equipped with a parachute and without providing any other  
35 occupants of the aircraft with parachutes and requiring that  
36 they be worn; or

37 (14) While in flying over a thickly inhabited area or over  
38 a public gathering in this state, engages in trick or acrobatic  
39 flying or in any acrobatic feat; or

40 (15) Except while in landing or taking off, flies at such  
41 low levels as to endanger persons on the surface beneath, or  
42 engages in advertising through the playing of music or  
43 transcribed or oral announcements, or makes any noise with any  
44 siren, horn, whistle, or other audible device which is not  
45 necessary for the normal operation of the aircraft, except that  
46 sound amplifying devices may be used in aircraft when operated  
47 by or under the authority of any agency of the state or federal  
48 government for the purpose of giving warning or instructions to  
49 persons on the ground; or

50 (16) Drops any object, except loose water, loose fuel, or  
51 loose sand ballast, without the prior written consent of the  
52 commissioner of transportation and the prior written consent of  
53 the municipality or property owner where objects may land; drops  
54 objects from an aircraft that endanger person or property on the  
55 ground, or drops leaflets for any purpose whatsoever; or

56 (17) While in flight in an aircraft, whether as a pilot,  
57 passenger, or otherwise, endangers, kills or attempts to kill  
58 any birds or animals or uses any aircraft for the purpose of  
59 concentrating, driving, rallying, or stirring up migratory  
60 waterfowl, except as may be permitted by other laws of this  
61 state shall be guilty of a misdemeanor.

62 No change for subd 2 to 5

63 Subd. 6. ADDITIONAL PENALTIES, CERTAIN VIOLATIONS.

64 For any violation of subdivisions 1 and 5 or of any rule or  
65 regulation issued pursuant to section 360.015, in addition to  
66 the penalties provided in this section, or as a condition to the  
67 suspension of a sentence which may be imposed pursuant thereto,  
68 the court in its discretion may prohibit the violator from  
69 operating an aircraft within the state for such period as it may  
70 determine, but not to exceed one year. Violation of the duly  
71 imposed prohibition of the court may be punished as a contempt  
72 of court. Upon a plea of guilty or conviction under said  
73 sections, in any case involving an airman aviation worker, the \*  
74 court shall issue an order prohibiting the airman aviation \*  
75 worker from exercising, in the state of Minnesota, the \*  
76 privileges granted to him the aviation worker by his federal \*

1 certificate for a period, in the discretion of the court, not to  
2 exceed one year, and shall notify the commissioner of any action  
3 involving a violation under this section by mailing a report to  
4 the commissioner showing the name and address of the violator,  
5 the offense charged, the time and place of violation, the plea,  
6 the finding of the court or jury, and the penalty imposed.

7 Subd. 7. OPERATION OF AIRCRAFT WHILE INTOXICATED.

8 Upon the trial of any prosecution for a violation of subdivision  
9 1, clause (2), the court may admit evidence of the amount of  
10 alcohol in the person's blood taken voluntarily or pursuant to  
11 section 360.0751 as shown by a medical or chemical analysis of  
12 ~~his~~ the blood, or of ~~his~~ the breath or urine if the person  
13 arrested elected to take such test in lieu thereof.

14 For the purpose of this subdivision:

15 (a) Evidence that there was at the time more than 0.03  
16 percent and less than 0.05 percent by weight of alcohol in the  
17 person's blood is relevant evidence but it is not to be given  
18 prima facie effect in indicating whether or not the person was  
19 under the influence of an alcoholic beverage.

20 (b) Evidence that there was at the time 0.05 percent or  
21 more by weight of alcohol in the person's blood may be admitted  
22 as prima facie evidence that the person was under the influence  
23 of an alcoholic beverage.

24 The foregoing provisions shall not be construed as limiting  
25 the introduction of any other competent evidence bearing upon  
26 the question whether or not such person was under the influence  
27 of an alcoholic beverage, but the refusal to permit the taking  
28 of specimens for such chemical analysis shall not be admissible  
29 in evidence. In the event of a breath or urine test, the  
30 percentage above shall be increased by ten percent.

31 For the purposes of this section, an "alcoholic beverage"  
32 means any liquid containing more than one-half of one percent of  
33 alcohol by volume.

360\*#0751S

34 360.0751 CHEMICAL TESTS FOR INTOXICATION.

35 No change for subd 1

36 Subd. 2. IMPLIED CONSENT; CONDITIONS; ELECTION AS TO  
37 TYPE OF TEST. Any person who operates or attempts to operate  
38 an aircraft in this state shall be deemed to have given consent  
39 subject to the provisions of this section for a chemical test of  
40 ~~his~~ the person's blood, breath, or urine for the purpose of  
41 determining the alcoholic content of ~~his~~ the blood. The test  
42 shall be administered at the direction of a peace officer, when  
43 (1) the officer has reasonable and probable grounds to believe  
44 that a person was operating or attempting to operate an aircraft  
45 while ~~he was~~ under the influence of an alcoholic beverage, and  
46 (2) the person has been lawfully placed under arrest for alleged  
47 commission of that offense in violation of section 360.075. No  
48 action shall be taken hereunder against the person unless the  
49 two enumerated conditions existed at the time the officer  
50 requested the chemical test specimen. A person may decline to  
51 take a direct blood test and elect to take either a breath, or  
52 urine test, whichever is available, in lieu thereof, and either  
53 a breath or urine test shall be made available to the arrested  
54 person who makes the election. No action shall be taken against  
55 the person for declining to take a direct blood test unless  
56 either a breath, or urine test was available. At the time ~~the~~  
57 ~~peace-officer-requests~~ of requesting a chemical test specimen,  
58 ~~he~~ the peace officer shall inform the arrested person that ~~his~~  
59 the right to fly may be revoked or denied if ~~he~~ the person  
60 refuses to permit the test and that ~~he~~ the person has the right  
61 to have additional tests made by ~~a-person~~ someone of ~~his~~ the  
62 person's own choosing.

63 Subd. 3. MANNER OF MAKING TEST; ADDITIONAL TESTS.

64 Only a physician, or a medical technician, or registered nurse  
65 acting at the request of a peace officer may withdraw blood for  
66 the purpose of determining the alcoholic content therein. This  
67 limitation shall not apply to the taking of a breath, or urine  
68 specimen. The person tested shall have the right to have a  
69 physician, or a medical technician, or registered nurse of ~~his~~  
70 the person's own choosing administer a chemical test or tests in  
71 addition to any administered at the direction of a peace  
72 officer; provided, that the additional test specimen of the  
73 person be obtained at the place where the person is in custody  
74 and at no expense to the state. The person shall have the right  
75 to immediately communicate with ~~his~~ an attorney, doctor or any

1 other person in order to secure a physician, medical technician  
 2 or registered nurse, for the purpose of administering the  
 3 additional test or tests; but this shall in no way delay the  
 4 administering of the test at the direction of the peace  
 5 officer. The failure or inability to obtain an additional test  
 6 or tests by a person shall not preclude the admission in  
 7 evidence of the test taken at the direction of a peace officer  
 8 unless the additional test was prevented or denied by the peace  
 9 officer. Upon the request of the person who is tested, full  
 10 information concerning the test or tests taken at the direction  
 11 of the peace officer shall be made available to ~~him~~ the person.  
 12 The physician, medical technician or registered nurse drawing  
 13 blood at the request of a peace officer for the purpose of  
 14 determining alcoholic content shall in no manner be liable in  
 15 any civil or criminal action except for negligence in drawing  
 16 the blood. The person administering the test at the request and  
 17 direction of the peace officer shall be fully trained in the  
 18 administration and interpretation of the tests pursuant to  
 19 standards promulgated by rule by the commissioner of public  
 20 safety.

21 Subd. 4. REFUSAL TO PERMIT TEST; CEASE AND DESIST  
 22 ORDER. If a person under arrest refuses to permit chemical  
 23 testing, none shall be given, but the commissioner of  
 24 transportation, upon the receipt of a certificate of the peace  
 25 officer that ~~he~~ the officer had reasonable and probable grounds  
 26 to believe the arrested person had been operating or attempting  
 27 to operate an aircraft while under the influence of an alcoholic  
 28 beverage, and that the person had refused to permit the test,  
 29 shall issue a cease and desist order prohibiting the operation  
 30 of an aircraft for a period of one year.

31 Subd. 5. NOTICE OF CEASE AND DESIST ORDER; REQUEST FOR  
 32 HEARING. No cease and desist order under subdivision 4 shall  
 33 be made until the commissioner notifies the person by certified  
 34 mail of ~~his~~ intention to issue a cease and desist order and  
 35 allows ~~him~~ the person a 20 day period after the date of  
 36 receiving the notice to request of the commissioner, in writing,  
 37 a hearing as herein provided. If no request is filed within the  
 38 20 day period the commissioner may then issue a cease and desist  
 39 order. However if a request for hearing is filed, no cease and  
 40 desist order hereunder shall be made until final judicial  
 41 determination resulting in an adverse decision to the person.

42 Subd. 6. HEARING. The hearing shall be before a  
 43 municipal judge, or probate judge if no municipal judge is  
 44 available, learned in the law, in the county where the arrest  
 45 occurred, unless there is agreement that the hearing may be held  
 46 in some other county. The hearing shall be recorded and proceed  
 47 as in a criminal matter, without the right of trial by jury, and  
 48 its scope shall cover the issues of whether the peace officer  
 49 had reasonable and probable grounds to believe the person was  
 50 operating or attempting to operate an aircraft while under the  
 51 influence of an alcoholic beverage; whether the person was  
 52 lawfully placed under arrest; whether ~~he~~ the person refused to  
 53 permit the test, and if ~~he~~ the person refused whether ~~he~~ the  
 54 person had reasonable grounds for refusing to permit the test;  
 55 and whether at the time of request for the test the peace  
 56 officer informed the person that ~~his~~ the right to fly might be  
 57 denied if ~~he~~ the person refused to permit the test and of ~~his~~  
 58 the right to have additional tests made by ~~a person~~ someone of  
 59 ~~his~~ the person's own choosing. The court shall order either  
 60 that the denial be rescinded or sustained and refer the order to  
 61 the commissioner of transportation for ~~his~~ further action.

62 No change for subd 7

63 Subd. 8. NOTICE OF ACTION TO OTHER STATES. When it  
 64 has been finally determined that a nonresident's privilege to  
 65 operate an aircraft in this state has been denied, the  
 66 commissioner shall give information in writing of the action  
 67 taken to the appropriate federal authorities and any state in  
 68 which ~~he~~ the nonresident operates an aircraft or has a license  
 69 to operate an aircraft.

360\*#305S

70 360.305 EXPENDITURES.

71 Subdivision 1. The moneys appropriated to the commissioner  
 72 of transportation as contemplated by sections 360.301 to 360.306  
 73 shall be used in accordance with this chapter, in amounts not  
 74 exceeding the sums specified for individual purposes in the acts  
 75 making such appropriations. Unless otherwise provided in any

1 such act, the governor may on ~~his~~ the governor's own initiative \*  
2 or upon application by the commissioner of transportation order  
3 a change in the provisional limitations on the amounts to be  
4 expended for the individual purposes specified.

5 No change for subd 2 to 7

360\*#511S

6 360.511 DEFINITIONS.

7 No change for subd 1 to 7

8 Subd. 8. "Dealer" means any person regularly engaged in  
9 the business of manufacturing or selling, purchasing, and  
10 generally dealing in new or used aircraft, having an established  
11 place of business for the trade, sale, and display thereof and  
12 having in ~~its, his, or their~~ possession new or used aircraft for \*  
13 the purpose of sale or trade.

14 No change for subd 9 to 15

360\*#532S

15 360.532 NONRESIDENT COMMERCIAL OPERATIONS; SUBJECT TO  
16 TAX.

17 Any aircraft of which a nonresident has the right to  
18 possession and which is used for commercial operations in this  
19 state shall be registered in this state before said aircraft is  
20 used for such commercial operations, except that aircraft used  
21 for charter which a nonresident has the right to possession need  
22 not be so registered if while in the state ~~he~~ the nonresident \*  
23 does not advertise, represent, or hold ~~himself~~ out as giving or \*  
24 offering to provide such service with such aircraft. Aircraft  
25 registered under this section shall not be entitled to a refund  
26 under 360.62 except if destroyed or for errors in computing the  
27 tax or fees and for the error on the part of an owner who may  
28 have registered an aircraft that was not before or at the time  
29 of such registration, or at any time thereafter during the  
30 current past year, subject to such tax in this state, or the  
31 aircraft is sold to a nonresident who is not engaged in a  
32 commercial operation in this state.

360\*#54S

33 360.54 SUBJECT TO TAX, EXEMPTION.

34 Every aircraft shall be presumed to be one using the air  
35 space overlying the state of Minnesota or the airports thereof,  
36 and thence subject to taxation under sections 360.511 to 360.67,  
37 if such aircraft has prior to the effective date of Laws 1945,  
38 Chapter 411, used such air space or airports, or shall actually  
39 use them or if it shall come into the possession of an owner in  
40 this state, other than a manufacturer, dealer,  
41 warehouseman warehouse operator, mortgagee, or pledgee and it \*  
42 shall be the burden of the owner thereof to prove that said  
43 aircraft has not in fact used the air space overlying the state  
44 of Minnesota or the airports thereof in order to avoid the  
45 payment of the tax as required herein.

360\*#55S

46 360.55 EXEMPTIONS.

47 No change for subd 1 to 3

48 Subd. 4. COLLECTOR'S AIRCRAFT; PIONEER LICENSES. Any  
49 aircraft built by the original manufacturer prior to December  
50 31, 1939, and owned and operated solely as a collector's item  
51 shall be listed for taxation and registration as follows: A  
52 sworn affidavit shall be executed stating the name and address  
53 of the owner, the name and address of the person from whom  
54 purchased, the make of the aircraft, year and model number of  
55 the aircraft, the federal aircraft registration number, the  
56 manufacturer's identification number and that the aircraft is  
57 owned and operated solely as a collector's item and not for  
58 general transportation or commercial operations purposes. The  
59 affidavit shall be filed with the commissioner along with a fee  
60 of \$25. Upon satisfaction that the affidavit is true and  
61 correct, the commissioner shall issue to the applicant number  
62 plates, decalcomania labels or stamps bearing the inscription  
63 "Pioneer", "Minnesota" and the registration number but no date.  
64 The number plates, decalcomania labels or stamps are valid  
65 without renewal as long as the owner operates the aircraft  
66 solely as a collector's item. Should such aircraft be operated  
67 other than as a collector's item, the pioneer number plates,  
68 decalcomania labels or stamps shall be void and removed, and the  
69 owner shall list the aircraft for taxation and registration in  
70 accordance with the other provisions of sections 360.511 to  
71 360.67. Upon the sale of such aircraft, the new owner must list  
72 the aircraft for taxation and registration in accordance with



1 the provisions of this subdivision (including the payment of \$25  
2 fee) or the other provisions of sections 360.511 to 360.67,  
3 whichever is applicable.

4 In the event of defacement, loss or destruction of the  
5 number plates, decalcomania labels or stamps, ~~the commissioner,~~ \*  
6 and upon receiving and filing a sworn affidavit of the aircraft \*  
7 owner setting forth the circumstances, together with any defaced  
8 plates, labels or stamps and fee of \$5, the commissioner shall \*  
9 issue replacement plates, labels or stamps. The commissioner  
10 shall note on ~~his~~ the records the issue of replacement number \*  
11 and shall proceed to cancel the original plates, labels or  
12 stamps.

13 No change for subd 5 to 7

360\*#57S

14 360.57 SWORN STATEMENT BY MANUFACTURER.

15 Every manufacturer of an aircraft sold or offered for sale  
16 within this state, either by the manufacturer, distributor,  
17 dealer, or any other person, shall, on or before the first day  
18 in August of each year, file in the office of the commissioner a  
19 sworn statement showing the various models manufactured by ~~him~~ \*  
20 the manufacturer and the retail list price of each model being \*  
21 manufactured August 1 of that year, and shall also file with the  
22 commissioner, in such form as manufacturers usually use for  
23 advertising, complete specifications of the construction of each  
24 model that has been manufactured by ~~him~~ the manufacturer. Upon \*  
25 each change in such price and upon the manufacture of each new  
26 model thereafter such manufacturer shall in like manner file a  
27 new statement setting forth such change.

360\*#58S

28 360.58 OPERATION WITHOUT REGISTRATION AND PAYMENT OF TAX.

29 No aircraft except as exempted by sections 360.54 and  
30 360.55 shall use or be operated in the air space over this state  
31 or upon any of the airports thereof in the tax period of January  
32 1, 1966, to and including June 30, 1967, or in any fiscal year  
33 thereafter until it shall have been registered as required in  
34 sections 360.54 to 360.67 and the aircraft tax and fees herein  
35 provided shall have been paid and the number plates, labels, or  
36 stamps issued therefor shall be duly displayed on such  
37 aircraft. A purchaser of a new aircraft may operate ~~his~~ the \*  
38 aircraft without such plates, labels, or stamps ~~provided that he~~ \*  
39 ~~shall secure~~ upon securing from the commissioner, or any person \*  
40 designated by the commissioner for that purpose, a permit to  
41 operate such aircraft pending the issuance of plates, such  
42 permit shall be valid for not more than 15 days.

360\*#59S

43 360.59 REGISTRATION AND LISTING.

44 Subdivision 1. DATE OF LISTING AND APPLICATION; FORM.

45 Every owner of aircraft in this state, except as exempted by  
46 sections 360.54 and 360.55, shall, before July 1, in each fiscal  
47 year thereafter, or as soon after such date ~~as he shall become~~ \*  
48 of becoming the owner thereof, file with the commissioner, on a \*  
49 blank provided by ~~him~~ the commissioner, a listing for taxation \*  
50 and application for the registration of such aircraft, in such  
51 form and stating such information as the commissioner may  
52 require. The said owner shall certify that the statements made  
53 are correct and true, and any false statement willfully and  
54 knowingly made in regard thereto shall be deemed a perjury and  
55 punished accordingly. The listing and application for  
56 registration by dealers or manufacturers' agents within the  
57 state of aircraft received for sale or use within the state  
58 shall be accepted as compliance with the requirements of  
59 sections 360.54 to 360.67 imposed upon the manufacturer.

60 Subd. 2. AGENT OR LIENOR MAY LIST. Any act required  
61 herein of an owner may be performed in ~~his~~ the owner's behalf by \*  
62 a duly authorized agent. Any person having a lien upon, or  
63 claim to, any aircraft may pay any tax due thereon to prevent  
64 the penalty for delayed registration from accruing, but the  
65 registration certificate and number plates shall not be issued  
66 until legal ownership is definitely determined.

67 Subd. 3. ISSUANCE OF CERTIFICATE. The commissioner  
68 shall file such application and upon approval thereof and upon  
69 payment of the aircraft tax as provided in sections 360.54 to  
70 360.67, together with all arrears and penalties, if any, and  
71 upon the delivery to ~~him~~ the commissioner of the duly endorsed \*  
72 registration certificate of the former owner, if any, or proof  
73 of loss provided in lieu thereof, shall assign to it a

1 distinctive number and issue to the owner a registration  
 2 certificate which shall contain the name, place of residence,  
 3 with street and number, if in a city, and post office address of  
 4 the owner, a specific description of the aircraft, and the  
 5 number assigned, together with a place on the face of the  
 6 certificate in which the owner shall immediately upon receipt  
 7 thereof place ~~his~~ the owner's signature and on the reverse side \*  
 8 thereof, an assignment and notice of sale or termination of  
 9 ownership with places for the signature of both seller and  
 10 purchaser, and a place for assignment of the tax that has been  
 11 paid. The registration certificate shall be retained by the  
 12 owner until surrender as herein provided. In the case of listing  
 13 and registration by manufacturers' agents or dealers of aircraft  
 14 not using the air space overlying the state of Minnesota and the  
 15 airports thereof no registration certificate shall be issued,  
 16 but a duplicate of such list may be retained by the dealer or  
 17 manufacturer as the registration certificate.

18 No change for subd 4

19 Subd. 5. COMMISSIONER TO APPROVE. The commissioner  
 20 shall approve applications and issue number plates for any  
 21 aircraft. When an applicant is listing the same aircraft for  
 22 taxation and registration for the second and succeeding time the  
 23 registration certificate issued for the prior year need not be  
 24 delivered to the commissioner; but in case of a transfer or sale  
 25 the registration certificate therefor issued or proof of loss  
 26 thereof by sworn statement shall be delivered to the  
 27 commissioner, ~~and he.~~ The commissioner shall ~~satisfy-himself be~~ \*  
 28 satisfied from ~~his~~ the records that all taxes and fees due \*  
 29 hereunder shall have been paid, and endorsements upon said  
 30 certificate or sworn proof of loss in writing signed by the  
 31 seller and purchaser, shall furnish proof that the applicant for  
 32 registration is paying or receiving credit for the tax upon the  
 33 aircraft of which ~~he~~ the applicant is the rightful possessor. \*

34 No change for subd 6

35 Subd. 7. TRANSFER OF OWNERSHIP. Upon the transfer  
 36 of ownership, destruction, theft, dismantling as such, or the  
 37 permanent removal by the owner thereof from this state of any  
 38 aircraft registered in accordance with the provisions of this  
 39 act, the right of the owner of such aircraft to use the  
 40 registration certificate and number plates assigned such  
 41 aircraft shall expire, and such certificate and any existing  
 42 plates shall be, by such owner, forthwith returned with  
 43 transportation prepaid to the commissioner with a signed notice  
 44 of the date and manner of termination of ownership, giving the  
 45 name and post office address, with street and number, if in a  
 46 city, of the person to whom transferred; provided, however, that  
 47 whenever the ownership of an aircraft shall be transferred to  
 48 another who shall forthwith register the same in ~~his~~ that \*  
 49 person's name, the commissioner may permit the manual delivery \*  
 50 of such plates to the new owner of such aircraft. ~~Whenever-any~~ \*  
 51 ~~person,-including-a-dealer-or-manufacturer,-shall-become~~ On \*  
 52 becoming the owner by gift, trade or purchase of any aircraft \*  
 53 for which a registration certificate has been theretofore issued \*  
 54 under the provisions of sections 360.511 to 360.67, ~~he~~ a person, \*  
 55 including a dealer or manufacturer, shall, within seven days \*  
 56 after acquiring ownership, join with the registered owner in \*  
 57 transmitting with ~~his~~ an application the said registration \*  
 58 certificate with the assignment and notice of sale duly executed \*  
 59 upon the reverse side thereof, or in case of loss of such \*  
 60 certificate, with such proof of loss by sworn statements in \*  
 61 writing as shall be satisfactory to the commissioner. Upon the \*  
 62 transfer of any aircraft by a manufacturer or dealer, for use \*  
 63 within the state, whether by sale, lease or otherwise, such \*  
 64 manufacturer or dealer shall, within seven days after such \*  
 65 transfer, transmit the transferee's application for registration \*  
 66 thereof and such manufacturer or dealer shall each month file \*  
 67 with the commissioner a notice or report containing the date of \*  
 68 such transfer, a description of such aircraft, and the name, \*  
 69 street and number of residence, if in a city, and post office \*  
 70 address of the transferee.

71 Subd. 8. AMENDMENT, SUSPENSION, MODIFICATION,  
 72 REVOCATION. All registrations and issue of number plates  
 73 shall be subject to amendment, suspension, modification or  
 74 revocation by the commissioner summarily for any violation of or  
 75 neglect to comply with the provisions of this act. In any case  
 76 where the proper registration of an aircraft is dependent upon

1 procuring information entailing such delay as to unreasonably  
 2 deprive the owner of the use of ~~his~~ the aircraft, the \*  
 3 commissioner may issue a tax receipt and plates conditionally.  
 4 In any case when ~~the commissioner for cause has revoked~~ revoking \*  
 5 a registration for cause, ~~he~~ the commissioner shall have \*  
 6 authority to demand the return of the number plates and  
 7 registration certificate, and, if necessary, to seize the number  
 8 plates issued for such registration.

9 Subd. 9. DEFACEMENT OR DESTRUCTION OF NUMBER PLATES.

10 In the event of the defacement, loss or destruction of any  
 11 number plates the commissioner upon receiving and filing a sworn  
 12 statement of the aircraft owner, setting forth the circumstances  
 13 of the defacement, loss, destruction or theft of the number  
 14 plates, together with any defaced plates and the payment of the  
 15 fee of \$1 shall issue a new set of plates especially designed  
 16 for that purpose. The commissioner shall then note on ~~his~~ the \*  
 17 records the issue of such new number plates and shall proceed in  
 18 such manner as ~~he~~ the commissioner may deem advisable to cancel \*  
 19 and call in the original plates so as to insure against their  
 20 use on another aircraft. Duplicate registration certificates  
 21 plainly marked as duplicates may be issued in like cases upon  
 22 the payment of a 25 cent fee.

23 No change for subd 10

360\*#60S

24 360.60 DAMAGED AIRCRAFT; REGISTRATION REQUIREMENTS;  
 25 ISSUANCE OF CERTIFICATE; FAILURE TO REGISTER; PENALTY.

26 Subdivision 1. Every aircraft not exempted by sections  
 27 360.54 and 360.55 shall be registered as required by this act  
 28 whether or not said aircraft is being used in the air space  
 29 overlying the state of Minnesota or on the airports thereof.  
 30 Aircraft which have become damaged, are unairworthy and not in  
 31 flying condition and which have not in fact used the air space  
 32 overlying the state of Minnesota or the airports thereof during  
 33 the period January 1, 1966, to and including June 30, 1967, or  
 34 during any fiscal year thereafter, shall not be subject to the  
 35 tax provided by this act for such tax periods provided the owner  
 36 of such aircraft shall with ~~his~~ the application for registration \*  
 37 file with the commissioner a signed statement describing the  
 38 aircraft, its condition, and the reason for such aircraft not  
 39 being in operating condition, and furnish such other information  
 40 as may be necessary for the commissioner to determine that the  
 41 aircraft is not in fact using the air space overlying the state  
 42 of Minnesota or the airports thereof. Any false statement  
 43 willfully and knowingly made in regard thereto shall be deemed a  
 44 perjury and punished accordingly. Upon receipt of such  
 45 application together with the statement required herein, the  
 46 commissioner shall issue to such owner a certificate which shall  
 47 state thereon that the tax has not been paid and that the  
 48 aircraft shall not use the air space overlying the state of  
 49 Minnesota or the airports thereof until the tax required by this  
 50 act has been paid.

51 Subd. 2. Every aircraft owner who fails or neglects to  
 52 register ~~his~~ the aircraft as required by this act shall be \*  
 53 guilty of a misdemeanor.

360\*#62S

54 360.62 REFUND OF TAX.

55 Except as provided herein the tax upon any aircraft which  
 56 has been paid for any year, shall be refunded only for errors  
 57 made in computing the tax or fees or for the error on the part  
 58 of an owner who may in error have registered an aircraft that  
 59 was not before, nor at the time of such registration, nor at any  
 60 time thereafter during the tax period, subject to such tax in  
 61 this state, provided that after more than 24 months after such  
 62 tax was paid no refund shall be made for any tax paid on any  
 63 aircraft. Refunds as provided by sections 360.511 to 360.67  
 64 shall be made in the manner provided by Laws 1947, Chapter 416.  
 65 The former owner of a transferred aircraft by an assignment in  
 66 writing endorsed upon ~~his~~ the former owner's registration \*  
 67 certificate and delivered to the commissioner within the time  
 68 provided herein may sell and assign to the new owner thereof the  
 69 right to have the tax paid by ~~him~~ the former owner accredited to \*  
 70 such new owner who duly registers such aircraft. Any owner  
 71 whose aircraft shall be destroyed or permanently removed from  
 72 the state shall be entitled to a refund for the unused portion  
 73 of the tax paid upon the aircraft so destroyed or removed from  
 74 the state, such refund to be computed pro rata by the month, and

1 to be equal to the monthly tax rate multiplied by the number of  
 2 full calendar months remaining in the fiscal year, or multiplied  
 3 by the number of full calendar months remaining in that period  
 4 between January 1, 1966, to and including June 30, 1967,  
 5 whichever period is applicable.

6 In order to secure such refund, the aircraft owner shall  
 7 submit a signed statement that such aircraft has either been  
 8 sold out-of-state or destroyed, the date of such sale or  
 9 destruction and such other information as the commissioner may  
 10 require. Any false statement willfully and knowingly made in  
 11 regard thereto shall be deemed a perjury and punished  
 12 accordingly. No refund shall be made if application is not made  
 13 within 12 months after the date the aircraft was sold  
 14 out-of-state or destroyed.

360\*#63S

15 360.63 DEALER'S LICENSE.

16 Subdivision 1. Any person engaged in the business of  
 17 selling, purchasing, or dealing in aircraft, new or used, and  
 18 who desires to withhold aircraft owned by ~~him~~ that person from \*  
 19 tax as provided in sections 360.511 to 360.67, may apply to the  
 20 commissioner for an aircraft dealer's license. In order to  
 21 qualify for an aircraft dealer's license the applicant shall  
 22 show that ~~he~~ the applicant has an established place of business \*  
 23 on an airport licensed as a public airport by the commissioner  
 24 and ~~that he~~ has the necessary buildings, facilities and \*  
 25 equipment for the proper storage and maintenance of aircraft in  
 26 accordance with such rules and regulations as may be established  
 27 by the commissioner. The commissioner may charge a fee of \$10  
 28 for each license, which license shall be effective for one year \*  
 29 from the date of its issuance, or ~~he~~ may authorize an aircraft \*  
 30 dealer to operate under a flight operator's license as otherwise  
 31 provided by chapter 360. The commissioner is empowered to  
 32 suspend or revoke any license issued by ~~him when he shall~~ \*  
 33 determine the commissioner on determining that the holder \*  
 34 thereof has violated any of the provisions of sections 360.511  
 35 to 360.67 or has failed to maintain any of the requirements  
 36 necessary to obtain such license.

37 Subd. 2. Any licensed aircraft dealer may apply to the  
 38 commissioner for one or more aircraft dealers' plates. A charge  
 39 of \$15 shall be made for each such plate. Any aircraft owned by  
 40 said dealer may be used for the purpose of demonstration or for  
 41 any purpose incident to the usual conduct and operation of ~~his~~ \*  
 42 business as an aircraft dealer provided aircraft dealers' plates  
 43 are conspicuously attached to the aircraft when so used, and  
 44 provided said aircraft has been first listed with the  
 45 commissioner on an aircraft withholding form provided by ~~him~~ the \*  
 46 commissioner. \*

360\*#651S

47 360.651 MANUFACTURERS, LISTING OF AIRCRAFT.

48 Subd. 2. On the first day of January, April, July, and  
 49 October in each year, every manufacturer of aircraft in the  
 50 state of Minnesota shall complete and file with the commissioner  
 51 of transportation not later than fifteen days thereafter, a  
 52 listing of all aircraft manufactured since ~~his~~ the last report, \*  
 53 showing for each such aircraft:

54 1. The United States registration number, model, and  
 55 horsepower;

56 2. Its date of completion;

57 3. If it has been sold, the name and address of the  
 58 purchaser and the date of the sale.

59 In addition, the listing shall include by United States  
 60 registration number:

61 1. Aircraft which were manufactured in a previous quarter  
 62 and are still in the possession of the manufacturer; and

63 2. Aircraft sold that were reported as completed aircraft \*  
 64 in the possession of the manufacturer on ~~his~~ the manufacturer's  
 65 listing for the last quarter, and the name and address of the  
 66 person to whom the aircraft was sold.

360\*#653S

67 360.653 AIRCRAFT, EXEMPTIONS.

68 The following aircraft, under the conditions specified,  
 69 shall be exempt from the registration and the tax provided by  
 70 sections 360.511 to 360.67.

71 (1) Any aircraft held by a dealer listed and used as  
 72 provided in section 360.63, except that aircraft held by dealers  
 73 on October 1, of each year, shall be registered and the entire

1 tax provided by sections 360.511 to 360.67 shall be paid for the  
 2 portion of the fiscal year prorated on a monthly basis  
 3 remaining after the aircraft came into the possession of the  
 4 dealer. It is further provided that a dealer who has previously  
 5 had aircraft on withholding may register such aircraft in  
 6 September of each fiscal year by payment of an amount equal to  
 7 1/3 of the annual tax, which tax shall be applicable for the  
 8 months of September through December and in January the dealer  
 9 may again list these aircraft on ~~his~~ the dealer's withholding  
 10 form. \*

11 (2) Aircraft remaining in the possession of aircraft  
 12 manufacturers ten months after completion shall become subject  
 13 to the tax provided by sections 360.511 to 360.67. The tax  
 14 shall be computed from the expiration of the ten months period  
 15 and shall be prorated on a monthly basis.

16 (3) Aircraft while in the hands of aircraft refitters for  
 17 the purpose of being refitted or modified or both, and while  
 18 being refitted or modified or both.

360\*#67S

19 360.67 VIOLATIONS AND PENALTIES.

20 No change for subd 1

21 Subd. 2. Any person who uses, or causes to be used or  
 22 operated, any aircraft in violation of the provisions of  
 23 sections 360.54 to 360.67, or while a certificate of  
 24 registration of an aircraft issued to ~~him~~ the person is  
 25 suspended or revoked, or knowingly delivers an aircraft to  
 26 another to be used or operated in violation of sections 360.54  
 27 to 360.67, or violates any of the provisions thereof, shall be  
 28 guilty of a misdemeanor. \*

29 No change for subd 3

30 Subd. 4. Any person who:

31 (1) Uses any number plates, label, or stamp or registration  
 32 certificate upon or in connection with any aircraft except the  
 33 one for which the same were duly issued, or upon any such  
 34 aircraft after the certificate, plates, label, or stamp or the  
 35 right to use the same have expired, or retains in ~~his~~ possession  
 36 or fails to surrender as provided in sections 360.511 to 360.67  
 37 any such number plates, label, stamp, or registration  
 38 certificate; or \*

39 (2) Displays, or causes to be displayed, or has in ~~his~~  
 40 possession any cancelled, revoked, suspended, or fraudulently  
 41 obtained or stolen registration plates, label, or stamp; or \*

42 (3) Lends ~~his~~ the person's registration plates, label, or  
 43 stamp to any person or knowingly permits the use thereof by  
 44 another; or \*

45 (4) Displays or represents as ~~his~~ the person's own any  
 46 registration plates, label, or stamp not issued to ~~him~~ the  
 47 person, provided, this shall not apply to any legal change of  
 48 ownership of the aircraft to which the plates, label, or stamp  
 49 are attached; or \*

50 (5) Uses a false or fictitious name or address or  
 51 description of the aircraft, engine number, or frame number in  
 52 any application for registration of an aircraft or knowingly  
 53 makes a false statement or knowingly conceals a material fact or  
 54 otherwise commits a fraud in any such application; or

55 (6) Defaces or alters any registration certificate or  
 56 number plates or retains the same in ~~his~~ possession after the  
 57 same have been defaced or altered; shall be guilty of a  
 58 misdemeanor. \*

360\*#83S

59 360.83 PERMITS, NECESSITY.

60 No change for subd 1 to 3

61 Subd. 4. Under subdivisions 1 and 2 of this section, the  
 62 commissioner may issue a permit for a structure which will be  
 63 located with respect to natural formations or other objects of a  
 64 permanent character so that no material increase in the  
 65 aeronautical hazard results therefrom. ~~He~~ The commissioner  
 66 shall issue permits where a literal application or enforcement  
 67 of the regulations would result in practical difficulty or  
 68 unnecessary hardship and the relief granted would not be  
 69 contrary to the public interest but do substantial justice and  
 70 be in accordance with the spirit of the rules and Minnesota  
 71 Statutes, Sections 360.011 to 360.074. \*

72 No change for subd 5

360\*#87S

73 360.87 INVESTIGATION; DETERMINATION; NOTICE; HEARING.

1 Upon receiving an application for a permit the commissioner  
2 shall make such investigation as may be necessary to process the  
3 application properly under sections 360.81 to 360.91.

4 If, upon such investigation, the commissioner determines  
5 that a permit should not be issued or that the height or  
6 location should be other than as applied for, the commissioner  
7 shall thereupon notify the applicant in writing of ~~his~~ that \*  
8 determination. Such notification may be served by delivering it  
9 personally to the applicant or by sending it first class mail to  
10 the applicant at the address specified in the application. Such  
11 determination shall become final 20 days after notification  
12 thereof is served unless the applicant, within such 20-day  
13 period, requests in writing that a hearing be held before the  
14 commissioner with reference to the application. All such  
15 hearings shall be open to the public. Any person interested may  
16 appear and be heard either in person or by counsel and may  
17 present such evidence and testimony as may be pertinent.

360\*#88S

18 360.88 FAILURE TO FILE FOR PERMIT; COMMISSIONER'S ACTION.

19 In any instance ~~where the commissioner learns of learning~~ \*  
20 or ~~has~~ having reasonable grounds to believe that any person is \*  
21 erecting or adding to a structure that would be subject to the \*  
22 provisions of sections 360.81 to 360.91 for which an application \*  
23 for a permit has not been filed, ~~he~~ the commissioner may on ~~his~~ \*  
24 the commissioner's own motion issue an order to such person to \*  
25 appear before ~~him~~ the commissioner and show cause why an \*  
26 application for a permit to erect or add to the structure need \*  
27 not be obtained. A date for a hearing thereon shall be set out \*  
28 in such order.

361\*#02S

29 361.02 DEFINITIONS.

30 No change for subd 1 to 3

31 Subd. 4. "Dealer" means any person engaged in the business  
32 of manufacturing or selling new and unused watercraft or used  
33 watercraft, or both, having an established place of business for  
34 the sale, trade and display of such watercraft, and having in  
35 ~~his~~ possession watercraft for the purpose of sale or trade. \*

36 No change for subd 5 to 9

37 Subd. 10. "Commissioner" means the commissioner of natural  
38 resources acting directly or through ~~his~~ authorized agents. \*

39 No change for subd 11 to 17

361\*#03S

40 361.03 WATERCRAFT LICENSES.

41 No change for subd 1 to 5

42 Subd. 6. EXPIRATION, RENEWAL: NEW LICENSES.

43 Licenses issued hereunder shall expire on December 31 of the  
44 year of expiration and may be renewed in the manner provided for  
45 original issuance. No new license shall be issued for any  
46 watercraft which has previously been licensed under this chapter  
47 except in accordance with this section, unless notice of  
48 abandonment of such watercraft shall have been given as  
49 hereinafter required at least one year prior to the date of  
50 application for such new license or unless the application is  
51 accompanied by satisfactory proof that the watercraft has been  
52 continually outside this state at least one year prior to such  
53 date. Any holder of a license shall notify the commissioner in  
54 writing within 30 days if ~~his~~ the holder's address no longer \*  
55 conforms to the address appearing on ~~his~~ the holder's license, \*  
56 upon such form as the commissioner shall prescribe.

57 No change for subd 7

58 Subd. 8. TRANSFER OF OWNERSHIP, DESTRUCTION OR  
59 ABANDONMENT OF WATERCRAFT. Within 15 days after the transfer  
60 of ownership, or any part thereof, other than a security  
61 interest, or the destruction or abandonment of any watercraft,  
62 written notice thereof shall be given to the commissioner in  
63 such form as ~~he~~ the commissioner shall prescribe. Every owner \*  
64 or part owner of a watercraft to whom ownership is transferred \*  
65 shall, upon failure to give such notice, be subject to the  
66 penalties imposed by this chapter. Failure to give such notice  
67 of transfer of ownership shall terminate the license without  
68 further action. Every notice of transfer of ownership shall  
69 also be accompanied by the duplicate license fee and, upon  
70 receipt thereof, the commissioner shall issue a duplicate  
71 license.

72 No change for subd 9 to 14

361\*#041S

1 361.041 WATERCRAFT SAFETY PROGRAM; OPERATORS.  
 2 Subdivision 1. SAFETY PROGRAM. The commissioner  
 3 shall continue and expand ~~his~~ the comprehensive boat safety and \*  
 4 education program and, in connection with the program, shall  
 5 issue operators permits as required by this section. The  
 6 commissioner shall cooperate with ~~boatmen~~ boaters, governmental \*  
 7 subdivisions, state agencies, other states, and the federal  
 8 government in the operation of the program. The commissioner  
 9 shall issue a watercraft operator's permit to a person who  
 10 successfully qualifies for a permit under the boat safety  
 11 education program.

12 No change for subd 2 to 3  
 361\*#055S

13 361.055 AGE OF OPERATOR.  
 14 Except in case of an emergency no person under the age of  
 15 13 years shall operate or be permitted to operate any watercraft  
 16 propelled by a motor with a factory rating of more than 24  
 17 horsepower unless there is present in the watercraft in addition  
 18 to the operator, ~~his~~ the operator's parent or legal guardian, or \*  
 19 at least one person of the age of 18 years or over.

361\*#085S

20 361.085 SCUBA DIVING; FLAGS REQUIRED.  
 21 Subdivision 1. All persons who swim in any waters of the  
 22 state, except in legally designated swimming areas, pursuant to  
 23 Minnesota Statutes 1974, Section 361.08, while wearing or  
 24 carrying any apparatus, except a snorkel not attached to any  
 25 artificial container of oxygen, permitting ~~him~~ the swimmer to \*  
 26 breathe while under water, shall display a diver's flag above  
 27 the surface of the water and:

- 28 (a) No more than four divers shall dive under one flag.
- 29 (b) Every person who places a diver's flag shall remain  
 30 within 50 feet of the flag, measured on the surface of the water.
- 31 (c) No person shall place a diver's flag where it will  
 32 obstruct navigation.

33 (d) If a group of divers is operating in a contained area,  
 34 the perimeter shall be marked and shall be outside of the normal  
 35 area of navigation. The markings shall consist of the official  
 36 diver's flag and shall be placed on the perimeter of the diving  
 37 area at intervals not exceeding 150 feet.

38 (e) A diver's flag shall measure at least 15 inches  
 39 horizontally and 12 inches vertically, and both sides shall have  
 40 a red-colored background bisected diagonally by a three inch  
 41 wide white stripe having its upper end adjacent to the flagstaff.

42 (f) A diver's flag shall be displayed in a vertical plane  
 43 extended from a rigid flagstaff equipped to maintain the upper  
 44 edge of the flag at least 30 inches above the water surface.

45 (g) A diver's flag may be reflectorized or fluorescent  
 46 provided the entire surface is uniformly reflectorized or  
 47 fluorescent.

48 (h) A diver's flag may be anchored or secured to the bottom  
 49 when a safety hazard would result from towing the flag.

50 (i) If at the discretion of the diver it would be safer and  
 51 more visible, the flag may be displayed on a watercraft. When  
 52 the flag is displayed on the watercraft, the craft must be at  
 53 anchor or, if not at anchor, attended by a diver or a person  
 54 appointed by the diver to tend the craft. Only watercraft  
 55 displaying an official diver's flag are authorized in the diving  
 56 area.

57 Subd. 2. No person shall scuba or skin dive in any waters  
 58 of this state at any time from one hour after sunset to sunrise  
 59 on the day following unless the diver has in ~~his~~ his possession a \*  
 60 diver's light visible when above water from a distance of at  
 61 least 150 feet, except that no diver's light shall be required  
 62 in any emergency, salvage, repair, or construction operation.  
 63 Scuba or skin diving while in possession of a spear is  
 64 prohibited from sunset to sunrise.

361\*#13S

65 361.13 STOPPING AT SCENE OF ACCIDENT OR INCIDENT;  
 66 REPORTS; LIABILITY.

67 Subdivision 1. The operator of any watercraft involved in  
 68 an accident or incident resulting in injury or death to any  
 69 person or in damage to property shall, if ~~he can do so~~ possible \*  
 70 without serious danger to the watercraft ~~he is operating~~ or the \*  
 71 persons aboard, immediately stop at the scene of the accident or  
 72 incident and render such assistance as may be practicable and  
 73 necessary and shall give ~~his~~ the operator's name, address and \*

1 license number of the watercraft ~~he-is-operating~~ and the name \*  
 2 and address of the owner thereof to the person injured or the  
 3 operator or occupants of the other watercraft or owner or  
 4 occupant of the property involved, and shall promptly report the  
 5 accident or incident to the sheriff of the county in which the  
 6 accident or incident occurred. Sheriffs are required to report  
 7 all accidents and incidents to the commissioner of natural  
 8 resources, who shall transmit statistics on boating accidents  
 9 and incidents to the U.S. Coast Guard.

10 Subd. 2. The owner and operator of any watercraft shall be  
 11 jointly and severally liable for any injury or damage occasioned  
 12 by the negligent operation of such watercraft whether such  
 13 negligence consists of a violation of the provisions of the  
 14 statutes of this state, or neglecting to observe such ordinary  
 15 care in such operation as the rules of common law require. The  
 16 owner shall not be liable if such watercraft is being operated  
 17 without ~~his~~ the owner's express or implied consent. It is \*  
 18 presumed that such operation is with the knowledge and consent  
 19 of the owner if at the time of the injury or damage it is under  
 20 the control of ~~his-or-her~~ the owner's spouse, father, mother, \*  
 21 brother, sister, son, daughter or other member of the owner's  
 22 immediate family. Nothing contained in this subdivision shall  
 23 be construed to relieve any other person from any liability  
 24 which ~~he~~ the person would otherwise have, nor shall anything \*  
 25 contained in this subdivision be construed to authorize or  
 26 permit any recovery in excess of the injury or damage actually  
 27 incurred.

361\*#21S

28 361.21 HAZARDS TO NAVIGATION; REMOVAL OF BUOYS OR  
 29 STRUCTURES.

30 Subdivision 1. The commissioner may require that a written  
 31 permit be obtained for the placement of any structure or device  
 32 which, in ~~his~~ the commissioner's opinion, constitutes a hazard \*  
 33 to navigation.

34 No change for subd 2 to 4

361\*#22S

35 361.22 PENALTIES FOR VIOLATIONS.

36 No change for subd 1

37 Subd. 2. An operator 13 years of age or older but less  
 38 than 18 years of age, adjudicated by a juvenile court as having  
 39 violated sections 361.05, or 361.12, or 361.13 shall have ~~his~~ \*  
 40 the operator's permit revoked by the commissioner. The \*  
 41 commissioner shall issue a new permit to the operator one year  
 42 after the revocation upon successful completion by the operator  
 43 of a watercraft safety course. The judge of a juvenile court,  
 44 which adjudicates an operator of violating any of the laws or  
 45 regulations listed above, shall require the surrender of the  
 46 person's watercraft operator's permit and shall forward the  
 47 operator's permit to the commissioner, together with a record of  
 48 the adjudication.

49 No change for subd 3

361\*#24S

50 361.24 DUTIES OF SHERIFFS, CONSERVATION OFFICERS, AND  
 51 COUNTY BOARDS.

52 Subdivision 1. It shall be the duty of the sheriff of each  
 53 county and conservation officers of the department of natural  
 54 resources to enforce the provisions of this chapter. It shall  
 55 be the duty of the sheriff of each county to maintain a program  
 56 of search, rescue, buoying or marking, patrol, removal of  
 57 hazards to navigation, and inspection of watercraft for rent,  
 58 lease, or hire. ~~He~~ The sheriff shall prohibit the use of any \*  
 59 watercraft or safety equipment for rent, lease, or hire which  
 60 does not comply with the standards of safety for such watercraft  
 61 or equipment which the commissioner shall prescribe. ~~He~~ The \*  
 62 sheriff shall investigate all watercraft accidents and drownings \*  
 63 and report ~~his~~ findings to the commissioner in such form as the \*  
 64 commissioner shall prescribe. The county board may authorize  
 65 the employment of such additional personnel as it deems  
 66 necessary to carry out the provisions of this section.

67 Subd. 2. On or before September 1 of each even-numbered  
 68 year, the county board of each county shall submit to the  
 69 commissioner its proposed budget to carry out the provisions of  
 70 sections 361.01 to 361.29, during the biennium beginning on the  
 71 following July 1. The commissioner shall review such proposed  
 72 budgets and incorporate into the budget for department of  
 73 natural resources such parts thereof as ~~he~~ the commissioner \*



1 deems necessary and equitable for each county. The amount  
 2 allocated for each county shall be paid to such county and a  
 3 separate accounting kept thereof. The commissioner may require  
 4 each county to make such reports as to the expenditure of such  
 5 funds as ~~he~~ the commissioner deems necessary. The commissioner \*  
 6 shall publish a report annually showing these expenditures,  
 7 copies of which shall be distributed to all participating  
 8 counties.

9 Subd. 3. The commissioner shall require a county to submit  
 10 a budget containing proposed activities that would adequately  
 11 carry out the provisions of this chapter. If the county fails  
 12 to submit a budget or fails to carry out the proposed activities  
 13 after submitting a budget, the commissioner may allocate all or  
 14 a portion of the county's share back to the department of  
 15 natural resources or to political subdivisions within the  
 16 county, including lake conservation districts in part or in  
 17 whole within the county, that the commissioner determines will  
 18 provide watercraft safety enforcement, supervision, marking,  
 19 regulation, search and rescue, and information on waters wholly  
 20 or partially within their boundaries. The commissioner may  
 21 require such budgets or reports on the expenditure of the funds  
 22 as ~~he~~ the commissioner deems necessary. If at any time, the \*  
 23 county sheriff determines that additional outside assistance is  
 24 necessary on a temporary, nonrecurring basis for the purposes of  
 25 boat and water safety, ~~he~~ the sheriff may request such \*  
 26 assistance from the commissioner. The commissioner may then  
 27 allocate emergency funding to the county, provide materials or  
 28 equipment on a temporary loan basis, or hire temporary personnel  
 29 as ~~he~~ the commissioner deems necessary. \*

30 No change for subd 4

361\*#25S

31 361.25 REGULATIONS.

32 The commissioner shall adopt, in the manner provided in  
 33 sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57  
 34 to 14.62, and shall publish in the manner prescribed in section  
 35 97.53, subdivision 2, regulations relating to the application  
 36 for, and form and numbering of watercraft licenses and the size,  
 37 form, reflectorize material and display of watercraft license  
 38 numbers which shall comply with the requirements of the federal  
 39 watercraft numbering system, placement and regulation of docks,  
 40 piers, buoys, mooring or marking devices and other structures in  
 41 the waters of this state, rules of the road for watercraft  
 42 navigation and standards for equipment used in the towing of  
 43 persons on water skis, aquaplanes, surfboards, saucers, and  
 44 other devices, standards for lights, signals, fire  
 45 extinguishers, bilge ventilation, and lifesaving equipment,  
 46 standards of safe load and power capacity, accounting,  
 47 procedural and reporting requirements for county sheriff,  
 48 designation of and swimming or bathing areas, standards of  
 49 safety for watercraft offered for rent, lease, or hire; and in  
 50 accordance with section 361.26, subdivision 2, clause (c), the  
 51 commissioner shall by no later than January 1, 1975, adopt rules  
 52 and regulations relating to the use of surface waters of this  
 53 state by watercraft including but not limited to (1) standards  
 54 and criteria for resolving conflicts in the use of water  
 55 surfaces by watercraft, (2) procedures for dealing with problems  
 56 involving more than one local governmental unit, (3) procedures  
 57 for local enforcement and (4) procedures for carrying out the  
 58 provisions of section 361.26, subdivision 2; and such other  
 59 regulations as ~~he~~ the commissioner deems necessary to carry out \*  
 60 the provisions of this chapter.

361\*#26S

61 361.26 APPLICATION OF STATE LAW; LOCAL REGULATIONS;  
 62 SURFACE USE REGULATIONS OF THE COMMISSIONER.

63 No change for subd 1 to 1a

64 Subd. 2. (a) Upon request of a county, city or town, the  
 65 commissioner may, ~~if he determines~~ on determining it to be in \*  
 66 the public interest, establish regulations relating to the use  
 67 of watercraft on waters of this state which border upon or are  
 68 within, in whole or in part, the territorial boundaries of the  
 69 governmental unit.

70 (b) Such regulations shall be established in the manner  
 71 provided by Minnesota Statutes 1969, Sections 15.0411 to  
 72 15.0422, but shall not be submitted to the attorney general nor  
 73 filed with the secretary of state until first approved by  
 74 resolutions of the county boards of a majority of the counties

1 affected by the proposed regulations.  
 2 (c) Such regulations may restrict any or all of the  
 3 following: (1) the type and size of watercraft and size of  
 4 motor which may use the waters affected by the regulation, (2)  
 5 the areas of water which may be used by watercraft, (3) speed of  
 6 watercraft, (4) times permitted for use of watercraft, or (5)  
 7 minimum distance between watercraft. When establishing  
 8 regulations the commissioner shall consider the physical  
 9 characteristics of the waters affected, their historical uses,  
 10 shoreland uses and classification, and any other features unique  
 11 to the waters affected by the regulations.

12 (d) The commissioner shall inform the users of the waters  
 13 of the regulations affecting them at least two weeks before the  
 14 effective date of the regulations by distributing copies of the  
 15 regulations and by posting of the public accesses of the waters.  
 16 However, the failure of the commissioner to comply with this  
 17 paragraph shall not affect the validity of the regulations or  
 18 any conviction for violation of the regulations.

19 (e) The cost of publishing regulations and of marking and  
 20 posting waters pursuant to this subdivision shall be paid by the  
 21 counties affected by the regulations, as apportioned by the  
 22 commissioner.

23 (f) Regulations or ordinances relating to the use of waters  
 24 of this state enacted by a local governmental unit before  
 25 January 1, 1972 shall continue in effect until repealed by the  
 26 local governmental unit or superseded by a regulation of the  
 27 commissioner promulgated pursuant to this subdivision.

362A#06S

28 362A.06 APPROVAL BY COMMISSIONER OF ENERGY AND ECONOMIC  
29 DEVELOPMENT.

30 Any authority contemplating the exercise of the powers  
 31 granted by sections 362A.01 to 362A.08 may apply to the  
 32 commissioner of energy and economic development for information,  
 33 advice, and assistance. No authority shall undertake any  
 34 project herein authorized until the commissioner has approved  
 35 the project, on the basis of preliminary information ~~he~~ the \*  
 36 commissioner may require, as tending to further the purposes and \*  
 37 policies of sections 362A.01 to 362A.08. The commissioner is  
 38 authorized to handle the preliminary information in a  
 39 confidential manner, to the extent requested by the authority.  
 40 Approval shall not be deemed to be an approval by the  
 41 commissioner or the state of the feasibility of the project or  
 42 the terms of the lease to be executed or the bonds to be issued  
 43 therefor, and the commissioner shall so state in communicating  
 44 the approval.

363\*#01S

45 363.01 DEFINITIONS.

46 No change for subd 1 to 5

47 Subd. 6. NATIONAL ORIGIN. "National origin" means  
 48 the place of birth of an individual or of any of ~~his~~ the \*  
 49 individual's lineal ancestors. \*

50 No change for subd 7 to 12

51 Subd. 13. REAL ESTATE BROKER OR SALESMAN SALESPERSON.

52 "Real estate broker or ~~salesman~~ salesperson" means, \*  
 53 respectively, a real estate broker as defined by section 82.17,  
 54 subdivision 4, and a real estate ~~salesman~~ salesperson as defined \*  
 55 by section 82.17, subdivision 5.

56 No change for subd 14 to 21

57 Subd. 22. CHARGING PARTY. "Charging party" means a

58 person filing a charge with the commissioner or ~~his~~ the \*  
 59 commissioner's designated agent pursuant to section 363.06, \*  
 60 subdivision 1.

61 Subd. 23. COMPLAINANT. "Complainant" means the  
 62 commissioner of human rights after ~~he-has-issued~~ issuing a \*  
 63 complaint pursuant to section 363.06.

64 No change for subd 24 to 38

363\*#02S

65 363.02 EXEMPTIONS.

66 Subdivision 1. EMPLOYMENT. The provisions of section  
 67 363.03, subdivision 1, shall not apply to:

- 68 (1) The employment of any individual
- 69 (a) by ~~his~~ the individual's parent, grandparent, spouse, \*
- 70 child, or grandchild, or
- 71 (b) in the domestic service of any person;
- 72 (2) A religious or fraternal corporation, association, or
- 73 society, with respect to qualifications based on religion, when

1 religion shall be a bona fide occupational qualification for  
2 employment;

3 (3) The employment of one person in place of another,  
4 standing by itself, shall not be evidence of an unfair  
5 discriminatory practice;

6 (4) The operation of a bona fide seniority system which  
7 mandates differences in such things as wages, hiring priorities,  
8 lay-off priorities, vacation credit, and job assignments based  
9 on seniority, so long as the operation of the system is not a  
10 subterfuge to evade the provisions of chapter 363;

11 (5) With respect to age discrimination, a practice by which  
12 a labor organization or employer offers or supplies varying  
13 insurance benefits or other fringe benefits to members or  
14 employees of differing ages, so long as the cost to the labor  
15 organization or employer for the benefits is reasonably  
16 equivalent for all members or employees;

17 (6) A restriction imposed by state statute, home rule  
18 charter, ordinance, or civil service rule, and applied uniformly  
19 and without exception to all individuals, which establishes a  
20 maximum age for entry into employment as a peace officer or  
21 firefighter.

22 (7) Nothing in this chapter concerning age discrimination  
23 shall be construed to validate or permit age requirements which  
24 have a disproportionate impact on persons of any class otherwise  
25 protected by section 363.03, subdivision 1 or 5.

26 It is not an unfair employment practice for an employer,  
27 employment agency or labor organization:

28 (i) to require or request a person to undergo physical  
29 examination, which may include a medical history, for the  
30 purpose of determining the person's capability to perform  
31 available employment, provided (a) that an offer of employment  
32 has been made on condition that the person meets the physical or  
33 mental requirements of the job; (b) that the examination tests  
34 only for essential job-related abilities; and (c) that the  
35 examination, unless limited to determining whether the person's  
36 disability would prevent performance of the job, is required of  
37 all persons conditionally offered employment for the same  
38 position regardless of disability; or

39 (ii) with the consent of the employee, to obtain additional  
40 medical information for the purposes of establishing an employee  
41 health record;

42 (iii) to administer pre-employment tests, provided that the  
43 tests (a) measure only essential job-related abilities, (b) are  
44 required of all applicants for the same position regardless of  
45 disability unless limited to determining whether the person's  
46 disability would prevent performance of the job, and (c)  
47 accurately measure the applicant's aptitude, achievement level,  
48 or whatever factors they purport to measure rather than  
49 reflecting the applicant's impaired sensory, manual, or speaking  
50 skills, except when those skills are the factors that the tests  
51 purport to measure; or

52 (iv) to limit receipt of benefits payable under a fringe  
53 benefit plan for disabilities to that period of time which a  
54 licensed physician reasonably determines a person is unable to  
55 work; or

56 (v) to provide special safety considerations for pregnant  
57 women involved in tasks which are potentially hazardous to the  
58 health of the unborn child, as determined by medical criteria.

59 Subd. 2. HOUSING. (1) The provisions of section  
60 363.03, subdivision 2, shall not apply to:

61 (a) rooms in a temporary or permanent residence home run by  
62 a nonprofit organization, if the discrimination is by sex; or

63 (b) the rental by ~~an a resident~~ owner or occupier of a  
64 one-family accommodation ~~in which he resides~~ of a room or rooms  
65 in the accommodation to another person or persons if the  
66 discrimination is by sex, marital status, status with regard to  
67 public assistance or disability. Nothing in this chapter shall  
68 be construed to require any person or group of persons selling,  
69 renting or leasing property to modify the property in any way,  
70 or exercise a higher degree of care for a person having a  
71 disability than for a person who does not have a disability; nor  
72 shall this chapter be construed to relieve any person or persons  
73 of any obligations generally imposed on all persons regardless  
74 of any disability in a written lease, rental agreement, or  
75 contract of purchase or sale, or to forbid distinctions based on  
76 the inability to fulfill the terms and conditions, including

\*  
\*

1 financial obligations of the lease, agreement or contract.

2 (2) The provisions of section 363.03, subdivision 2,  
3 prohibiting discrimination because of familial status shall not  
4 be construed to defeat the applicability of any local, state or  
5 federal restrictions regarding the maximum number of occupants  
6 permitted to occupy a dwelling unit and shall not apply to:

7 (a) any unoccupied dwelling unit in one building of a  
8 housing complex consisting of two buildings or, in a housing  
9 complex consisting of three or more buildings, any unoccupied  
10 dwelling unit in up to one-third of all buildings in the housing  
11 complex. For the purposes of this clause, "housing complex"  
12 means a group of buildings each containing five or more units on  
13 a contiguous parcel of land owned by the same person; a building  
14 shall not be exempt from section 363.03, subdivision 2, pursuant  
15 to this clause unless the owner has filed an election to  
16 designate the building as exempt with the commissioner; an  
17 election made by an owner pursuant to this clause may not be  
18 withdrawn for purposes of designating another building in the  
19 housing complex as exempt for a period of one year from the  
20 filing of the election; or

21 (b) any unit in a condominium created prior to April 12,  
22 1980, any unit in a condominium, other than a condominium  
23 converted from a residential building, created on or after April  
24 12, 1980, and any unit in an adults-only condominium created  
25 from an existing adults-only rental building on or after April  
26 12, 1980; or

27 (c) an unoccupied dwelling unit in any building in which at  
28 least a majority of the dwelling units are occupied by elderly  
29 persons or are unoccupied and available for occupancy solely by  
30 households of which at least one member is an elderly person; or

31 (d) any owner occupied building containing four or fewer  
32 dwelling units; or

33 (e) an unoccupied dwelling unit in any building which is  
34 the subject of a valid certificate filed with the commissioner  
35 pursuant to the provisions of this clause. To be valid, a  
36 certificate must be on a form provided by the commissioner, be  
37 received by the commissioner, state that on the date that the  
38 certificate is received by the commissioner at least a majority  
39 of the dwelling units in the building are occupied by elderly  
40 persons or are unoccupied and available for occupancy solely by  
41 households of which at least one member is an elderly person,  
42 state that on the date that the certificate is received by the  
43 commissioner there is on file with the owner of the building or  
44 a specified duly authorized agent of the owner for each occupied  
45 unit relied upon in support of the certificate a signed  
46 statement by an elderly person occupying the unit on the date  
47 that the certificate is received by the commissioner that the  
48 person is an elderly person, state that for a period of 180 days  
49 following the receipt of the certificate by the commissioner the  
50 owner or duly authorized agent will preserve the signed  
51 statements of the elderly persons and will, upon request, make  
52 the statements available for inspection by the commissioner or  
53 by any local commission having jurisdiction over the building,  
54 be signed by the owner or the duly authorized agent, and be in  
55 all respects true and accurate. A valid certificate shall  
56 remain valid for a period of 180 days following the date on  
57 which it is received by the commissioner. Any owner or  
58 authorized agent who files a certificate containing statements  
59 or information that the owner or authorized agent knows or  
60 should reasonably know to be false shall be guilty of a  
61 misdemeanor;

62 (f) any unoccupied dwelling unit of up to one-third of the  
63 units in a building that is not part of a multi-building  
64 complex; or

65 (g) any dwelling unit in a building owned by a cooperative  
66 apartment corporation, other than a building converted from a  
67 residential rental building to a cooperative apartment  
68 corporation building on or after April 12, 1980, unless that  
69 conversion was from an existing adults-only residential rental  
70 building.

71 No change for subd 2a to 7

363\*#03S

72 363.03 UNFAIR DISCRIMINATORY PRACTICES.

73 Subdivision 1. EMPLOYMENT. Except when based on a  
74 bona fide occupational qualification, it is an unfair employment  
75 practice:

1 (1) For a labor organization, because of race, color,  
2 creed, religion, national origin, sex, marital status, status  
3 with regard to public assistance, disability, or age,

4 (a) to deny full and equal membership rights to a person  
5 seeking membership or to a member;

6 (b) to expel a member from membership;

7 (c) to discriminate against a person seeking membership or  
8 a member with respect to his-hire hiring, apprenticeship, \*  
9 tenure, compensation, terms, upgrading, conditions, facilities,  
10 or privileges of employment; or

11 (d) to fail to classify properly, or refer for employment  
12 or otherwise to discriminate against a person or member.

13 (2) For an employer, because of race, color, creed,  
14 religion, national origin, sex, marital status, status with  
15 regard to public assistance, membership or activity in a local  
16 commission, disability, or age,

17 (a) to refuse to hire or to maintain a system of employment  
18 which unreasonably excludes a person seeking employment; or

19 (b) to discharge an employee; or

20 (c) to discriminate against a person with respect to his \*  
21 hire hiring, tenure, compensation, terms, upgrading, conditions, \*  
22 facilities, or privileges of employment.

23 (3) For an employment agency, because of race, color,  
24 creed, religion, national origin, sex, marital status, status  
25 with regard to public assistance, disability, or age,

26 (a) to refuse or fail to accept, register, classify  
27 properly, or refer for employment or otherwise to discriminate  
28 against a person; or

29 (b) to comply with a request from an employer for referral  
30 of applicants for employment if the request indicates directly  
31 or indirectly that the employer fails to comply with the  
32 provisions of this chapter.

33 (4) For an employer, employment agency, or labor  
34 organization, before a person is employed by an employer or  
35 admitted to membership in a labor organization, to

36 (a) require the person to furnish information that pertains  
37 to race, color, creed, religion, national origin, sex, marital  
38 status, status with regard to public assistance or disability,  
39 unless, for the purpose of national security, information  
40 pertaining to national origin is required by the United States,  
41 this state or a political subdivision or agency of the United  
42 States or this state, or for the purpose of compliance with the  
43 public contracts act or any rule, regulation or laws of the  
44 United States or of this state requiring information pertaining  
45 to race, color, creed, religion, national origin, sex, marital  
46 status, status with regard to public assistance or disability is  
47 required by the United States or a political subdivision or  
48 agency of the United States; or

49 (b) cause to be printed or published a notice or  
50 advertisement that relates to employment or membership and  
51 discloses a preference, limitation, specification, or  
52 discrimination based on race, color, creed, religion, national  
53 origin, sex, marital status, status with regard to public  
54 assistance, disability or age.

55 (5) For an employer, an employment agency or a labor  
56 organization, with respect to all employment related purposes,  
57 including receipt of benefits under fringe benefit programs, not  
58 to treat women affected by pregnancy, childbirth, or  
59 disabilities related to pregnancy or childbirth, the same as  
60 other persons who are not so affected but who are similar in  
61 their ability or inability to work.

62 (6) For an employer with 50 or more permanent, full-time  
63 employees, an employment agency or a labor organization, not to  
64 make reasonable accommodation to the known disability of a  
65 qualified disabled person unless the employer, agency, or  
66 organization can demonstrate that the accommodation would impose  
67 an undue hardship on the business, agency, or organization.  
68 "Reasonable accommodation" means steps which must be taken to  
69 accommodate the known physical or mental limitations of a  
70 qualified disabled person. "Reasonable accommodation" may  
71 include but is not limited to: (a) making facilities readily  
72 accessible to and usable by disabled persons; and (b) job  
73 restructuring, modified work schedules that do not reduce the  
74 total number of hours normally worked, acquisition or  
75 modification of equipment or devices, and the provision of aides  
76 on a temporary or periodic basis.

1 In determining whether an accommodation would impose an  
2 undue hardship on the operation of a business or organization,  
3 factors to be considered include:

4 (a) the overall size of the business or organization with  
5 respect to number of employees or members and the number and  
6 type of facilities;

7 (b) the type of the operation, including the composition  
8 and structure of the work force, and the number of employees at  
9 the location where the employment would occur;

10 (c) the nature and cost of the needed accommodation;

11 (d) the reasonable ability to finance the accommodation at  
12 each site of business; and

13 (e) documented good faith efforts to explore less  
14 restrictive or less expensive alternatives, including  
15 consultation with the disabled person or with knowledgeable  
16 disabled persons or organizations.

17 In the case of an accommodation for a job applicant, any  
18 cost in excess of \$50 imposed on the prospective employer shall  
19 be deemed an undue hardship if no alternative costing \$50 or  
20 less exists. A prospective employer need not pay for an  
21 accommodation for a job applicant which costs \$50 or less if it  
22 is available from an alternative source without cost to the  
23 employer or applicant.

24 Subd. 2. REAL PROPERTY. It is an unfair  
25 discriminatory practice:

26 (1) For an owner, lessee, sublessee, assignee, or managing  
27 agent of, or other person having the right to sell, rent or  
28 lease any real property, or any agent of any of these:

29 (a) to refuse to sell, rent, or lease or otherwise deny to  
30 or withhold from any person or group of persons any real  
31 property because of race, color, creed, religion, national  
32 origin, sex, marital status, status with regard to public  
33 assistance, disability, or familial status; or

34 (b) to discriminate against any person or group of persons  
35 because of race, color, creed, religion, national origin, sex,  
36 marital status, status with regard to public assistance,  
37 disability, or familial status in the terms, conditions or  
38 privileges of the sale, rental or lease of any real property or  
39 in the furnishing of facilities or services in connection  
40 therewith, except that nothing in this clause shall be construed  
41 to prohibit the adoption of reasonable rules and regulations  
42 intended to protect the safety of minors in their use of the  
43 real property or any facilities or services furnished in  
44 connection therewith; or

45 (c) in any transaction involving real property, to print,  
46 circulate or post or cause to be printed, circulated, or posted  
47 any advertisement or sign, or use any form of application for  
48 the purchase, rental or lease of real property, or make any  
49 record or inquiry in connection with the prospective purchase,  
50 rental, or lease of real property which expresses, directly or  
51 indirectly, any limitation, specification, or discrimination as  
52 to race, color, creed, religion, national origin, sex, marital  
53 status, status with regard to public assistance, disability, or  
54 familial status, or any intent to make any such limitation,  
55 specification, or discrimination except that nothing in this  
56 clause shall be construed to prohibit the advertisement of a  
57 dwelling unit as available to adults-only if the person placing  
58 the advertisement reasonably believes that the provisions of  
59 this subdivision prohibiting discrimination because of familial  
60 status do not apply to the dwelling unit.

61 (2) For a real estate broker, real estate salesperson, or  
62 employee, or agent thereof:

63 (a) to refuse to sell, rent, or lease or to offer for  
64 sale, rental, or lease any real property to any person or group  
65 of persons or to negotiate for the sale, rental, or lease of any  
66 real property to any person or group of persons because of race,  
67 color, creed, religion, national origin, sex, marital status,  
68 status with regard to public assistance, disability, or familial  
69 status or represent that real property is not available for  
70 inspection, sale, rental, or lease when in fact it is so  
71 available, or otherwise deny or withhold any real property or  
72 any facilities of real property to or from any person or group  
73 of persons because of race, color, creed, religion, national  
74 origin, sex, marital status, status with regard to public  
75 assistance, disability, or familial status; or

76 (b) to discriminate against any person because of race,

1 color, creed, religion, national origin, sex, marital status,  
2 status with regard to public assistance, disability, or familial  
3 status in the terms, conditions or privileges of the sale,  
4 rental or lease of real property or in the furnishing of  
5 facilities or services in connection therewith; or

6 (c) to print, circulate, or post or cause to be printed,  
7 circulated, or posted any advertisement or sign, or use any form  
8 of application for the purchase, rental, or lease of any real  
9 property or make any record or inquiry in connection with the  
10 prospective purchase, rental or lease of any real property,  
11 which expresses directly or indirectly, any limitation,  
12 specification or discrimination as to race, color, creed,  
13 religion, national origin, sex, marital status, status with  
14 regard to public assistance, disability, or familial status or  
15 any intent to make any such limitation, specification or  
16 discrimination except that nothing in this clause shall be  
17 construed to prohibit the advertisement of a dwelling unit as  
18 available to adults-only if the person placing the advertisement  
19 reasonably believes that the provisions of this subdivision  
20 prohibiting discrimination because of familial status do not  
21 apply to the dwelling unit.

22 (3) For a person, bank, banking organization, mortgage  
23 company, insurance company, or other financial institution or  
24 lender to whom application is made for financial assistance for  
25 the purchase, lease, acquisition, construction, rehabilitation,  
26 repair or maintenance of any real property or any agent or  
27 employee thereof:

28 (a) to discriminate against any person or group of persons  
29 because of race, color, creed, religion, national origin, sex,  
30 marital status, status with regard to public assistance,  
31 disability, or familial status of the person or group of persons  
32 or of the prospective occupants or tenants of the real property  
33 in the granting, withholding, extending, modifying or renewing,  
34 or in the rates, terms, conditions, or privileges of the  
35 financial assistance or in the extension of services in  
36 connection therewith; or

37 (b) to use any form of application for the financial  
38 assistance or make any record or inquiry in connection with  
39 applications for the financial assistance which expresses,  
40 directly or indirectly, any limitation, specification, or  
41 discrimination as to race, color, creed, religion, national  
42 origin, sex, marital status, status with regard to public  
43 assistance, disability, or familial status or any intent to make  
44 any such limitation, specification, or discrimination; or

45 (c) to discriminate against any person or group of persons  
46 who desire to purchase, lease, acquire, construct, rehabilitate,  
47 repair or maintain real property in a specific urban or rural  
48 area or any part thereof solely because of the social, economic  
49 or environmental conditions of the area in the granting,  
50 withholding, extending, modifying, or renewing, or in the rates,  
51 terms, conditions, or privileges of the financial assistance or  
52 in the extension of services in connection therewith.

53 (4) For any real estate broker or real estate salesperson,  
54 for the purpose of inducing a real property transaction from  
55 which the person, ~~his~~ the person's firm, or any of its members \*  
56 may benefit financially, to represent that a change has occurred  
57 or will or may occur in the composition with respect to race,  
58 creed, color, national origin, sex, marital status, status with  
59 regard to public assistance, or disability of the owners or  
60 occupants in the block, neighborhood, or area in which the real  
61 property is located, and to represent, directly or indirectly,  
62 that this change will or may result in undesirable consequences  
63 in the block, neighborhood, or area in which the real property  
64 is located, including but not limited to the lowering of  
65 property values, an increase in criminal or antisocial behavior,  
66 or a decline in the quality of schools or other public  
67 facilities.

68 (5) Notwithstanding the provisions of any law, ordinance,  
69 or home rule charter to the contrary, no person shall be deemed  
70 to have committed an unfair discriminatory practice based upon  
71 age if the unfair discriminatory practice alleged is attempted  
72 or accomplished for the purpose of obtaining or maintaining one  
73 of the exemptions provided for a dwelling unit provided for in  
74 section 363.02, subdivision 2.

75 No change for subd 3 to 5

76 Subd. 6. AIDING AND ABETTING AND OBSTRUCTION. It is

1 an unfair discriminatory practice for any person:

2 (1) Intentionally to aid, abet, incite, compel, or coerce a  
3 person to engage in any of the practices forbidden by this  
4 chapter;

5 (2) Intentionally to attempt to aid, abet, incite, compel,  
6 or coerce a person to engage in any of the practices forbidden  
7 by this chapter;

8 (3) To intentionally obstruct or prevent any person from  
9 complying with the provisions of this chapter, or any order  
10 issued thereunder, or to resist, prevent, impede, or interfere  
11 with the commissioner or any of ~~his~~ the commissioner's employees \*  
12 or representatives in the performance of duty under this chapter.

13 No change for subd 7 to 8a

14 Subd. 9. INTERFERENCE WITH PENSION RIGHTS. For  
15 purposes of subdivision 1 discrimination on account of age shall  
16 include acts which interfere with an employee's opportunity to  
17 acquire pension credits or pension benefits when the  
18 interference cannot be shown to have been based on just cause  
19 unrelated to the employee's status with regard to ~~his~~ pension \*  
20 credits or pension benefits.

21 No change for subd 10

363\*#05S

22 363.05 DUTIES OF COMMISSIONER.

23 Subdivision 1. FORMULATION OF POLICIES. The  
24 commissioner shall formulate policies to effectuate the purposes  
25 of this chapter and shall:

26 (1) Exercise leadership under the direction of the governor  
27 in the development of human rights policies and programs, and  
28 make recommendations to the governor and the legislature for  
29 their consideration and implementation;

30 (2) cooperate and consult with appropriate commissioners  
31 and agencies in developing plans and programs to most  
32 effectively serve the needs of Indians, to assist women and to  
33 fulfill the purposes of chapter 363;

34 (3) establish and maintain a principal office in St. Paul,  
35 and any other necessary branch offices at any location within  
36 the state;

37 (4) meet and function at any place within the state;

38 (5) employ such hearing examiners, attorneys, clerks and  
39 other employees and agents as ~~he~~ the commissioner may deem \*  
40 necessary and prescribe their duties;

41 (6) to the extent permitted by federal law and regulation,  
42 utilize the records of the department of economic security of  
43 the state when necessary to effectuate the purposes of this  
44 chapter;

45 (7) obtain upon request and utilize the services of all  
46 state governmental departments and agencies;

47 (8) adopt suitable rules and regulations for effectuating  
48 the purposes of this chapter;

49 (9) issue complaints, receive and investigate charges  
50 alleging unfair discriminatory practices, and determine whether  
51 or not probable cause exists for hearing;

52 (10) subpoena witnesses, administer oaths, take testimony,  
53 and require the production for examination of any books or  
54 papers relative to any matter under investigation or in  
55 question; authorize hearing examiners to exercise the authority  
56 conferred by this clause;

57 (11) attempt, by means of education, conference,  
58 conciliation, and persuasion to eliminate unfair discriminatory  
59 practices as being contrary to the public policy of the state;

60 (12) conduct research and study discriminatory practices;

61 (13) publish and distribute the results of research and  
62 study when in the judgment of the commissioner the purposes of  
63 this chapter, will be served thereby;

64 (14) develop and conduct programs of formal and informal  
65 education designed to eliminate discrimination and intergroup  
66 conflict by use of educational techniques and programs ~~he~~ the \*  
67 commissioner deems necessary; \*

68 (15) make a written report of the activities of the  
69 commissioner to the governor each year and to the legislature by  
70 November 15 of each even-numbered year;

71 (16) accept gifts, bequests, grants or other payments  
72 public and private to help finance the activities of the  
73 department;

74 (17) create such local and statewide advisory committees as  
75 will in ~~his~~ the commissioner's judgment aid in effectuating the \*



1 purposes of the department of human rights;  
 2 (18) appoint a hearing examiner to preside at a public  
 3 hearing on any complaint;  
 4 (19) develop such programs as will aid in determining the  
 5 compliance throughout the state with the provisions of this  
 6 chapter, and in the furtherance of such duties, conduct research  
 7 and study discriminatory practices based upon race, color,  
 8 creed, religion, national origin, sex, age, disability, marital  
 9 status, status with regard to public assistance, familial  
 10 status, or other factors and develop accurate data on the nature  
 11 and extent of discrimination and other matters as they may  
 12 affect housing, employment, public accommodations, schools, and  
 13 other areas of public life;

14 (20) develop and disseminate technical assistance to  
 15 persons subject to the provisions of this chapter, and to  
 16 agencies and officers of governmental and private agencies;

17 (21) provide staff services to such advisory committees as  
 18 may be created in aid of the functions of the department of  
 19 human rights;

20 (22) make grants in aid to the extent that appropriations  
 21 are made available for that purpose in aid of carrying out ~~his~~ \*  
 22 duties and responsibilities, but no grant in aid shall be made  
 23 without first obtaining the advice and consent of the board;

24 (23) develop educational programs, community organization  
 25 programs, leadership development programs, motivational  
 26 programs, and business development programs for the benefit of  
 27 those persons theretofore and hereafter subject to prejudice and  
 28 discrimination;

29 (24) provide information for and direction to a program  
 30 designed to assist Indian citizens to assume all the rights,  
 31 privileges, and duties of citizenship; and to coordinate and  
 32 cooperate with local, state and national and private agencies  
 33 providing services to the Indian people; and

34 (25) cooperate and consult with the commissioner of labor  
 35 and industry regarding the investigation of violations of, and  
 36 resolution of complaints regarding section 363.03, subdivision 9.

37 Subd. 2. ENFORCEMENT AND EFFECT OF SUBPOENA. (a)  
 38 Disobedience of a subpoena issued by the commissioner pursuant  
 39 to subdivision 1 shall be punishable in like manner as a  
 40 contempt of the district court in proceedings instituted upon  
 41 application of the commissioner made to the district court of  
 42 the county where the alleged unfair discriminatory practice in  
 43 connection with a charge made by a charging party or a complaint  
 44 filed by the commissioner has occurred or where the respondent  
 45 resides or has ~~his~~ a principal place of business. \*

46 (b) It is not a violation of rights conferred by chapter 13  
 47 or any other statute related to the confidentiality of  
 48 government data for an agency to provide data or information  
 49 under a subpoena issued by the commissioner under this section.  
 363\*#06S

50 363.06 GRIEVANCES.  
 51 Subdivision 1. CHARGE FILING. Any person aggrieved  
 52 by a violation of this chapter may bring a civil action as  
 53 provided in section 363.14, subdivision 1, clause (a), or may  
 54 file a verified charge with the commissioner or ~~his~~ the \*  
 55 commissioner's designated agent, stating the name and address of \*  
 56 the person alleged to have committed an unfair discriminatory  
 57 practice, setting out the details of the practice complained of  
 58 and, if applicable, providing witnesses, documents, and any  
 59 other information required by the commissioner. The  
 60 commissioner may dismiss a charge when the charging party fails  
 61 to provide required information. The commissioner within five  
 62 days of the filing shall serve a copy of the charge and a  
 63 request for a response upon the respondent personally or by  
 64 registered or certified mail. After the filing of a charge the  
 65 commissioner shall notify the charging party in writing of any  
 66 change in the status of the charge. A copy of the notice shall  
 67 be mailed to the respondent.

68 No change for subd 2

69 Subd. 3. TIME FOR FILING CLAIM. A claim of an unfair  
 70 discriminatory practice must be brought as a civil action  
 71 pursuant to section 363.14, subdivision 1, clause (a), filed in  
 72 a charge with a local commission pursuant to section 363.116, or  
 73 filed in a charge with the commissioner within 300 days after  
 74 the occurrence of the practice. The running of the 300 day  
 75 limitation period is suspended during the time a potential

1 charging party and respondent are voluntarily engaged in a  
2 dispute resolution process involving a claim of unlawful  
3 discrimination under chapter 363, including arbitration,  
4 conciliation, mediation or grievance procedures pursuant to a  
5 collective bargaining agreement or statutory, charter, or  
6 ordinance provisions for a civil service or other employment  
7 system. A potential respondent who participates in such a  
8 process with a potential charging party before a charge is filed  
9 or a civil action is brought shall notify the department and the  
10 charging party in writing of ~~his or her~~ the participation in the \*  
11 process and the date the process commenced, and shall also  
12 notify the department and the charging party of the ending date  
13 of the process. A respondent who fails to provide this  
14 notification is barred from raising the defense that the statute  
15 of limitations has run unless the 300 days plus a period of time  
16 equal to the suspension period has passed.

17 Subd. 4. INQUIRY INTO CHARGE. (1) Consistent with  
18 clause (7), the commissioner shall promptly inquire into the  
19 truth of the allegations of the charge. The commissioner shall  
20 make an immediate inquiry when a charge alleges actual or  
21 threatened physical violence. The commissioner shall also make  
22 an immediate inquiry when it appears that a charge is frivolous  
23 or without merit and shall dismiss those charges.

24 The commissioner shall then give priority to investigating  
25 and processing those charges which the commissioner determines  
26 have one or more of the following characteristics:

27 (a) there is evidence that the respondent has intentionally  
28 engaged in a reprisal;

29 (b) there is evidence of irreparable harm if immediate  
30 action is not taken;

31 (c) there is potential for broadly promoting the policies  
32 of this chapter;

33 (d) a significant number of recent charges have been filed  
34 against the respondent;

35 (e) the respondent is a government entity;

36 (f) the charge is supported by substantial documentation,  
37 witnesses, or other evidence.

38 The commissioner shall inform charging parties of these  
39 priorities and shall tell each party if their charge is a  
40 priority case or not.

41 On other charges the commissioner shall make a  
42 determination within 12 months after the charge was filed as to  
43 whether or not there is probable cause to credit the allegation  
44 of unfair discriminatory practices, and

45 (2) If the commissioner determines after investigation that  
46 no probable cause exists to credit the allegations of the unfair  
47 discriminatory practice, the commissioner shall, within ten days  
48 of the determination, serve upon the charging party and  
49 respondent written notice of the determination. Within ten days  
50 after receipt of notice, the charging party may request in  
51 writing on forms prepared by the department that the  
52 commissioner reconsider ~~his~~ the determination. The request \*  
53 shall contain a brief statement of the reasons for and new  
54 evidence in support of the request for reconsideration. At the  
55 time of submission of the request to the commissioner, the  
56 charging party shall deliver or mail to the respondent a copy of  
57 the request for reconsideration. The commissioner shall either  
58 reaffirm or reverse ~~his~~ the determination of no probable cause \*  
59 within 20 days after receipt of the request for reconsideration,  
60 and ~~he~~ shall within ten days notify in writing the charging \*  
61 party and respondent of ~~his~~ the decision to reaffirm or reverse. \*

62 A decision by the commissioner that no probable cause  
63 exists to credit the allegations of an unfair discriminatory  
64 practice shall not be appealed to the court of appeals pursuant  
65 to section 363.072 or sections 14.63 to 14.68.

66 (3) If the commissioner determines after investigation that  
67 probable cause exists to credit the allegations of unfair  
68 discriminatory practices, the commissioner shall serve on the  
69 respondent and ~~his~~ the respondent's attorney if ~~he~~ the \*  
70 respondent is represented by counsel, by first class mail, a \*  
71 notice setting forth a short plain written statement of the  
72 alleged facts which support the finding of probable cause and an  
73 enumeration of the provisions of law allegedly violated. If the  
74 commissioner determines that attempts to eliminate the alleged  
75 unfair practices through conciliation pursuant to subdivision 5  
76 have been or would be unsuccessful or unproductive, the

1 commissioner shall issue a complaint and serve on the  
2 respondent, by registered or certified mail, a written notice of  
3 hearing together with a copy of the complaint, requiring the  
4 respondent to answer the allegations of the complaint at a  
5 hearing before a hearing examiner at a time and place specified  
6 in the notice, not less than ten days after service of said  
7 complaint. A copy of the notice shall be furnished to the  
8 charging party and the attorney general.

9 (4) If, at any time after the filing of a charge, the  
10 commissioner has reason to believe that a respondent has engaged  
11 in any unfair discriminatory practice, the commissioner may file  
12 a petition in the district court in a county in which the  
13 subject of the complaint occurs, or in a county in which a  
14 respondent resides or transacts business, seeking appropriate  
15 temporary relief against the respondent, pending final  
16 determination of proceedings under this chapter, including an  
17 order or decree restraining him the respondent from doing or \*  
18 procuring an act tending to render ineffectual an order the  
19 commissioner may enter with respect to the complaint. The court  
20 shall have power to grant temporary relief or a restraining  
21 order as it deems just and proper, but no relief or order  
22 extending beyond ten days shall be granted except by consent of  
23 the respondent or after hearing upon notice to the respondent  
24 and a finding by the court that there is reasonable cause to  
25 believe that the respondent has engaged in a discriminatory  
26 practice. Except as modified by this section, the Minnesota  
27 rules of civil procedure shall apply to an application, and the  
28 district court shall have authority to grant or deny the relief  
29 sought on conditions as it deems just and equitable. All  
30 hearings under this section shall be given precedence as nearly  
31 as practicable over all other pending civil actions.

32 (5) If a lessor, after ~~he has engaged~~ engaging in a \*  
33 discriminatory practice defined in section 363.03, subdivision  
34 2, clause (1), (a), leases or rents a dwelling unit to a person  
35 who has no knowledge of the practice or of the existence of a  
36 charge with respect to the practice, the lessor shall be liable  
37 for actual damages sustained by a person by reason of a final  
38 order as provided in this section requiring the person to be  
39 evicted from the dwelling unit.

40 (6) In any complaint issued under this section, the  
41 commissioner may seek relief for a class of individuals affected  
42 by an unfair discriminatory practice occurring on or after a  
43 date 300 days prior to the filing of the charge from which the  
44 complaint originates.

45 (7) The commissioner may adopt policies to determine which  
46 charges are processed and the order in which charges are  
47 processed based on their particular social or legal  
48 significance, administrative convenience, difficulty of  
49 resolution, or other standard consistent with the provisions of  
50 this chapter.

51 (8) The hearing examiner shall adopt policies to provide  
52 sanctions for intentional and frivolous delay caused by any  
53 charging party or respondent in an investigation, hearing, or  
54 any other aspect of proceedings before the department under this  
55 chapter.

56 No change for subd 4a

57 Subd. 5. ATTEMPTS TO ELIMINATE UNFAIR PRACTICES.

58 The commissioner, in complying with subdivision 4, shall  
59 endeavor to eliminate the unfair discriminatory practice through  
60 education, conference, conciliation and persuasion at the place  
61 where the practice occurred, or the respondent resides or has  
62 ~~his~~ a principal place of business. \*

63 Subd. 6. PUBLICATION OF ACCOUNTS OF CASES. The  
64 commissioner may publish an account of a case in which the  
65 complaint has been dismissed or the terms of settlement of a  
66 case that has been voluntarily adjusted. Except as provided in  
67 other sections of this chapter, the commissioner shall not  
68 disclose any information concerning ~~his~~ efforts in a particular \*  
69 case to eliminate an unfair discriminatory practice through  
70 education, conference, conciliation and persuasion.

71 Subd. 7. Repealed, 1976 c 301 s 5

72 Subd. 8. ACCESS TO DOCUMENTS. The commissioner shall  
73 provide the respondent with a copy of the charge. The charging  
74 party or ~~his~~ the party's representative may review the answer of \*  
75 the respondent to the charge submitted pursuant to subdivision 1.  
76 The department shall make these documents available to the

1 charging party.  
363\*#071S

2 363.071 HEARINGS.

3 Subdivision 1. CONDUCT OF HEARINGS. A complaint  
4 issued by the commissioner shall be heard as a contested case,  
5 except that the report of the hearing examiner shall be binding  
6 on all parties to the proceeding and if appropriate shall be  
7 implemented by an order as provided for in subdivision 2. The  
8 hearing shall be conducted at a place designated by the  
9 commissioner, within the county where the unfair discriminatory  
10 practice occurred or where the respondent resides or has ~~his~~ a \*  
11 principal place of business. The hearing shall be conducted in  
12 accordance with sections 14.57 to 14.62, and is subject to  
13 appeal in accordance with sections 14.63 to 14.68.

14 Subd. 1a. HEARINGS 180 DAYS AFTER CHARGE. At any  
15 time after 180 days from the filing of a charge, if there has  
16 been neither a finding of probable cause nor of no probable  
17 cause, the charging party may file a request with the  
18 commissioner to appear at a hearing on ~~his~~ the party's own \*  
19 behalf or through a private attorney. Upon receipt of the  
20 request, the commissioner shall review the documents and  
21 information held in the department's files concerning the charge  
22 and shall release to the charging party and respondent all  
23 documents and information that is accessible to the charging  
24 party and respondent under sections 13.01 to 13.87. The  
25 commissioner shall forward the request for hearing to the office  
26 of administrative hearings, which shall promptly set the matter  
27 for hearing. If the charging party prevails at this hearing,  
28 the hearing examiner may require the respondent to reimburse the  
29 charging party for reasonable attorney's fees.

30 Subd. 2. DETERMINATION OF DISCRIMINATORY PRACTICE.  
31 The hearing examiner shall make findings of fact and conclusions  
32 of law, and if the hearing examiner finds that the respondent  
33 has engaged in an unfair discriminatory practice, the hearing  
34 examiner shall issue an order directing the respondent to cease  
35 and desist from the unfair discriminatory practice found to  
36 exist and to take such affirmative action as in the judgment of  
37 the examiner will effectuate the purposes of this chapter. Such  
38 order shall be a final decision of the department. The examiner  
39 shall order any respondent found to be in violation of any  
40 provision of section 363.03 to pay a civil penalty to the  
41 state. This penalty is in addition to compensatory and punitive  
42 damages to be paid to an aggrieved party. The hearing examiner  
43 shall determine the amount of the civil penalty to be paid,  
44 taking into account the seriousness and extent of the violation,  
45 the public harm occasioned by the violation, whether the  
46 violation was intentional, and the financial resources of the  
47 respondent. Any penalties imposed under this provision shall be  
48 paid into the general fund of the state. In all cases where the  
49 examiner finds that the respondent has engaged in an unfair  
50 discriminatory practice the examiner shall order the respondent  
51 to pay an aggrieved party, who has suffered discrimination,  
52 compensatory damages in an amount up to three times the actual  
53 damages sustained. In all cases, the examiner may also order  
54 the respondent to pay an aggrieved party, who has suffered  
55 discrimination, damages for mental anguish or suffering and  
56 reasonable attorney's fees, in addition to punitive damages in  
57 an amount not more than \$6,000. Punitive damages shall be  
58 awarded pursuant to section 549.20. In any case where a  
59 political subdivision is a respondent the total of punitive  
60 damages awarded an aggrieved party may not exceed \$6,000 and in  
61 that case if there are two or more respondents the punitive  
62 damages may be apportioned among them. Punitive damages may  
63 only be assessed against a political subdivision in its capacity  
64 as a corporate entity and no regular or ex officio member of a  
65 governing body of a political subdivision shall be personally  
66 liable for payment of punitive damages pursuant to this  
67 subdivision. In addition to the aforesaid remedies, in a case  
68 involving discrimination in

69 (a) employment, the examiner may order the hiring,  
70 reinstatement or upgrading of an aggrieved party, who has  
71 suffered discrimination, with or without back pay, admission or  
72 restoration to membership in a labor organization, or ~~his~~ \*  
73 admission to or participation in an apprenticeship training  
74 program, on-the-job training program, or other retraining  
75 program, or any other relief the examiner deems just and

1 equitable.

2 (b) housing, the examiner may order the sale, lease, or  
3 rental of the housing accommodation or other real property to an  
4 aggrieved party, who has suffered discrimination, or the sale,  
5 lease or rental of a like accommodation or other real property  
6 owned by or under the control of the person against whom the  
7 complaint was filed, according to terms as listed with a real  
8 estate broker, or if no such listing has been made, as otherwise  
9 advertised or offered by the vendor or lessor, or any other  
10 relief the examiner deems just and equitable.

11 The examiner shall cause the findings of fact, conclusions  
12 of law, and order to be served on the respondent personally, the  
13 charging party by registered or certified mail, and shall  
14 furnish copies to the attorney general and the commissioner.

15 No change for subd 3 to 6

363\*#116S

16 363.116 TRANSFER TO COMMISSIONER.

17 A local commission may refer a matter under its  
18 jurisdiction to the commissioner.

19 The charging party has the option of filing a charge either  
20 with a local commission or the department. Notwithstanding the  
21 provisions of any ordinance or resolution to the contrary, a  
22 charge may be filed with a local commission within 300 days  
23 after the occurrence of the practice. The exercise of such  
24 choice in filing a charge with one agency shall preclude the  
25 option of filing the same charge with the other agency. At the  
26 time a charge comes to the attention of a local agency, the  
27 agency or its representative shall inform the charging party of  
28 this option, and of ~~his~~ the party's rights under Laws 1967,  
29 chapter 897.

30 The term "local commission" as used in this section has the  
31 same meaning given the term in section 363.115.

363\*#117S

32 363.117 WITHDRAWAL FROM A LOCAL COMMISSION.

33 Notwithstanding the provisions of any law or ordinance to  
34 the contrary, a person who has filed a charge with a local  
35 commission may bring a civil action as provided in section  
36 363.14 at the following times:

37 (a) Within 45 days after the local commission has  
38 determined that there is no probable cause to credit the  
39 allegations contained in the charge; or

40 (b) After 45 days from the filing of the charge if a  
41 hearing has not been held or if the local commission has not  
42 entered into a conciliation agreement to which the charging  
43 party is a signator. The charging party shall notify the local  
44 commission of ~~his~~ an intention to bring a civil action, which  
45 shall be commenced within 90 days of giving the notice.

46 A charging party bringing a civil action shall mail by  
47 registered or certified mail a copy of the summons and complaint  
48 to the local commission and upon their receipt the local  
49 commission shall terminate all proceedings before the local  
50 commission relating to the charge. No charge shall be filed or  
51 reinstated with the local commission after a civil action  
52 relating to the same unfair discriminatory practice has been  
53 brought unless the civil action has been dismissed without  
54 prejudice.

363\*#14S

55 363.14 COURT ACTIONS, SUITS BY PRIVATE PARTIES,  
56 INTERVENTION, DISTRICT COURT JURISDICTION, ATTORNEY'S FEES, AND  
57 COSTS.

58 Subdivision 1. COURT ACTIONS, SUITS BY PRIVATE PARTIES,  
59 INTERVENTION. A person may bring a civil action seeking  
60 redress for an unfair discriminatory practice:

61 (a) Directly to district court; or

62 (b) Notwithstanding the provisions of any law to the  
63 contrary, (1) within 45 days after the commissioner has  
64 dismissed a charge because it is frivolous or without merit,  
65 because the charging party has failed to provide required  
66 information, because the commissioner has determined that  
67 further use of department resources is not warranted, or because  
68 the commissioner has determined that there is no probable cause  
69 to credit the allegations contained in a charge filed with the  
70 commissioner; (2) within 45 days after the commissioner has  
71 reaffirmed ~~his~~ a determination of no probable cause if the  
72 charging party requested a reconsideration of the probable cause  
73 determination; or (3) after 45 days from the filing of a charge

1 pursuant to section 363.06, subdivision 1 if a hearing has not  
2 been held pursuant to section 363.071 or if the commissioner has  
3 not entered into a conciliation agreement to which the charging  
4 party is a signator. The charging party shall notify the  
5 commissioner of ~~his~~ an intention to bring a civil action, which  
6 shall be commenced within 90 days of giving the notice; \*

7 (c) The commissioner may dismiss, without prejudice to the  
8 charging party, any case filed with the department on or before  
9 June 30, 1978. The commissioner shall notify a charging party  
10 by regular mail sent before August 1, 1981, ~~that he has a~~ of the \*  
11 right to bring a civil action pursuant to this section. Upon  
12 giving this notice the commissioner shall end all proceedings in  
13 the department relating to the charge. Notwithstanding any  
14 statutory period of limitation to the contrary, an individual  
15 notified pursuant to this clause may bring a civil action  
16 relating to ~~his~~ the charge; provided that the action is filed on \*  
17 or before February 1, 1982.

18 A charging party bringing a civil action shall mail by  
19 registered or certified mail a copy of the summons and complaint  
20 to the commissioner, and upon their receipt the commissioner  
21 shall terminate all proceedings in the department relating to  
22 the charge. No charge shall be filed or reinstated with the  
23 commissioner after a civil action relating to the same unfair  
24 discriminatory practice has been brought unless the civil action  
25 has been dismissed without prejudice.

26 Upon application by the complaining party to the district  
27 court at a special term and under circumstances the court deems  
28 just, the court may appoint an attorney for the person and may  
29 authorize the commencement of the action without payment of  
30 fees, costs, or security.

31 Upon timely application, the court may permit the  
32 department to intervene in a civil action brought pursuant to  
33 this section upon certification that the case is of general  
34 public importance.

35 Subd. 2. DISTRICT COURT JURISDICTION. Any action  
36 brought pursuant to this section shall be filed in the district  
37 court of the county wherein the unlawful discriminatory practice  
38 is alleged to have been committed or where the respondent  
39 resides or has ~~his~~ a principal place of business. \*

40 Any action brought pursuant to this chapter shall be heard  
41 and determined by a judge sitting without a jury.

42 If the court finds that the respondent has engaged in an  
43 unfair discriminatory practice, it shall issue an order  
44 directing appropriate relief as provided by section 363.071,  
45 subdivision 2.

46 No change for subd 3  
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47 364.03 RELATION OF CONVICTION TO EMPLOYMENT OR  
48 OCCUPATION.

49 No change for subd 1 to 2

50 Subd. 3. A person who has been convicted of a crime or  
51 crimes which directly relate to the public employment sought or  
52 to the occupation for which a license is sought shall not be  
53 disqualified from the employment or occupation if the person can  
54 show competent evidence of sufficient rehabilitation and present  
55 fitness to perform the duties of the public employment sought or  
56 the occupation for which the license is sought. Sufficient  
57 evidence of rehabilitation may be established by the production  
58 of:

59 (a) A copy of the local, state, or federal release order;  
60 and

61 (b) Evidence showing that at least one year has elapsed  
62 since release from any local, state, or federal correctional  
63 institution without subsequent conviction of a crime; and  
64 evidence showing compliance with all terms and conditions of  
65 probation or parole; or

66 (c) A copy of the relevant department of corrections  
67 discharge order or other documents showing completion of  
68 probation or parole supervision.

69 In addition to the documentary evidence presented, the  
70 licensing or hiring authority shall consider any evidence  
71 presented by the applicant regarding:

72 (1) The nature and seriousness of the crime or crimes for  
73 which convicted;

74 (2) All circumstances relative to the crime or crimes,  
75 including mitigating circumstances or social conditions

1 surrounding the commission of the crime or crimes;

2 (3) The age of the person at the time the crime or crimes  
3 were committed;

4 (4) The length of time elapsed since the crime or crimes  
5 were committed; and

6 (5) All other competent evidence of rehabilitation and  
7 present fitness presented, including, but not limited to,  
8 letters of reference by persons who have been in contact with  
9 the applicant since ~~his-or-her~~ the applicant's release from any \*  
10 local, state, or federal correctional institution.

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11 364.09 LAW ENFORCEMENT; EXCEPTION.

12 This chapter shall not apply to the practice of law  
13 enforcement or to eligibility for a family day care license or a  
14 family foster care license. Nothing in this section shall be  
15 construed to preclude the Minnesota police and peace officers  
16 training board from recommending policies set forth in this  
17 chapter to the attorney general for adoption in ~~his~~ the attorney \*  
18 general's discretion to apply to law enforcement. \*