REPORT

OF

REVISOR OF STATUTES

****

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

****

SUBMITTED TO THE LEGISLATURE OF THE STATE OF MINNESOTA

NOVEMBER 1982

Pursuant to Mn Stat 482.09 (10)

MINNESOTA LEGISLATURE

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November 15, 1982

The Honorable Jack Davies
President of the Senate

and

The Honorable Harry A. Sieben, Jr.
Speaker of the House of Representatives

State Capitol
St. Paul, MN 55155

Gentlemen:

Minnesota Statutes, Section 482.09 (9) requires the Revisor of Statutes to biennially report to the Legislature on statutory changes recommended or statutory deficiencies noted in opinions of the Supreme Court of Minnesota.

I am, therefore, pleased to transmit to you our report on opinions issued by the Supreme Court between September 30, 1980 and September 30, 1982.

Respectfully submitted,

Steven C. Cross
Revisor of Statutes

SCC:ms
cc: Chairman and Members,
Senate Judiciary Committee

Chairman and Members,
House Judiciary Committee

REPORT OF THE REVISOR OF STATUTES

TO THE

LEGISLATURE OF THE STATE OF MINNESOTA

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

The Revisor of Statutes respectfully reports to the Legislature of the State of Minnesota, in accordance with Minnesota Statutes, Section 482.09 (9), which provides that the Revisor of Statutes shall:

> "Report to the Legislature by November 15 of each even numbered year any statutory changes recommended or discussed or statutory deficiencies noted in any opinion of the supreme court of Minnesota filed during the two-year period immediately preceding September 30 of the year preceding the year in which the session is held, together with such comment as may be necessary to outline clearly the legislative problem reported."

The opinions of the Supreme Court of Minnesota concerning statutory changes recommended or discussed, or statutory deficiencies noted during the period beginning September 30, 1980, and ending September 30, 1982, together with a statement of the cases and the comment of the court, are set forth on the following pages, in alphabetical order.

In each instance where a practical remedy for the statutory defect is suggested by the Supreme Court or is otherwise readily apparent, the summary of the case concludes with a brief statement thereof. This statement is included in an attempt to make this report of more value to the user, and the remedies suggested are not, in most instances, intended to be exclusive. In addition, this report concludes with a bill containing amendments designed to remedy the defects.

TABLE OF CASES

Section 296.02, Subdivision 7

ARCHER DANIELS MIDLAND CO. v. STATE

Archer Daniels Midland Co. v. State, 315 N.W.2d 579 (February 12, 1982) was an appeal by the State from a District Court interpretation of Section 296.02, Subdivision 7, enacted in 1980, providing that:

> "The tax on gasoline imposed by subdivision 1 shall be reduced by four cents per gallon for gasoline which is agricultural alcohol gasoline as defined in section 296.01, subdivision 24, which is blended by a distributor with alcohol distilled in this state from agricultural products produced in this state, and which is used in producing and generating power for propelling motor vehicles used on the public highways of this state. ***" (emphasis added)

The District Court ruled that the underscored portion of the statute was unconstitutional under the Commerce Clause because it discriminates against interstate commerce, but extended the tax reduction to all gasohol regardless of its origin, in effect severing the unconstitutional portion. The Supreme Court upheld the declaration of unconstitutionality but reversed the District Court on the issue of severability holding that:

> "In this case the unconstitutional language of the Act explicitly limits the four-cent per gallon tax reduction to Minnesota gasohol. This indicates a legislative intent to benefit only intrastate concerns. If the unconstitutional language of the Act were stricken and the Act's tax reduction extended to out-of-state concerns such as ADM, this legislative intent would be comletely frustrated. We conclude, therefore, that the remaining portions of the Act, standing alone 'are incapable of being executed in accordance with legislative intent.' Minn.Stat. S 645.20(1980)"

The Court also pointed out that to work a severance in this instance would primarily benefit ADM since they supply 85 percent of the fuel-grade alcohol used in the state to make

gasohol, and that this would be contrary to the dictate of Minn.Stat. S 645.17(5) which provides that:

> "the legislature intends to favor the public interest as against any private interest."

Though the Legislature could effect a severance of the unconstitutional language, it appears that, in view of the reasons discussed in the Court's opinion a repeal of Section 296.02, Subdivision 7 plus Section 296.01, Subdivision 24 cited therein would be desirable.

Section 65B.51, Subdivision 1

CONAT v. PROVOST

Conat v. Provost, 301 N.W.2d 313 (January 9, 1981) represents a reaffirmation by the Supreme Court of its earlier holding in Haugan v. Town of Waltham 292 N.W.2d 737, to the effect that:

> "The provision of Minn.Stat. S 65B.51(1978), which requires the deduction of future economic benefits from a tort recovery is unenforceable ***."

(See page 15 of the Report of the Revisor of Statutes Concerning Certain Opinions of the Supreme Court (November 1980))

The holding in Haugan was based upon an interpretation of Article I, Section 8 of the Minnesota Constitution which provides that:

> "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

The statutory deficiency re-emphasized in this case could be remedied by legislation in the following form:

"Subdivision 1. [Deduction of basic economic loss benefits.] With respect to a cause of action in negligence accruing as a result of injury arising out of the operation, ownership, maintenance or use of a motor vehicle with respect to which security has been provided as required by sections 65B.41 to 65B.71, there shall be deducted from any recovery the value of basic or optional economic loss benefits paid or payable ~~or which will be payable in the future~~, or which would be payable but for any applicable deductible."

Section 336.3-419(3)

DENN v. FIRST STATE BANK OF SPRING LAKE PARK

Denn v. First State Bank of Spring Lake Park, 316 N.W.2d 532 (March 5, 1982) was a case involving construction of a provision of the Uniform Commercial Code, adopted in Minnesota as Section 336.3-419, Clause (3), providing that:

> "Subject to the provisions of this chapter concerning restrictive endorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands." (emphasis added)

Defendant bank, acting as both depositary and collecting bank, accepted checks bearing forged endorsements and granted provisional credit to the party who presented them. Defendant bank then presented the checks to the drawee bank, which paid them, whereupon defendant bank allowed the holder of the provisional credit to withdraw the money from the account. The forgery was discovered too late to prevent payment. There was no evidence of any lack of good faith or reasonable commercial standards on the part of defendant bank, nor did defendant bank retain any of the proceeds.

As stated by the Court:

> "This appeal raises the issue of whether a depositary bank which collected and paid out on two checks bearing forged indorsements is absolved from liability to the payee of the checks under Minn.Stat. S 336.3-419(3) when it acted in good faith and in accordance with reasonable commercial standards. We hold that it is."

The opinion traced the history of clause (3) through its promulgation in 1949 by the Commissioners on Uniform State Laws, including the 1951 addition of the phrase, "including a depositary or collecting bank" and quoted with approval decisions from three other states which refused to include a depositary or collecting bank within the term "representative," stating:

> "The arguments of the Ervin and Cooper courts are persuasive, but we are compelled to reach an opposite conclusion. We can ignore neither the plain language of the statute which expressly includes depositary and collecting banks in its description of representatives nor the comments which appear to exclude such banks from liability."

The Court stated strong policy arguments in Denn's (Plaintiff's) favor, declaring:

> "It is judicially efficient to allow the true payee to proceed directly against a collecting bank. The collecting bank will bear the ultimate loss in most cases. If the payee must sue the drawee bank, the drawee bank will sue the collecting bank on the warranties of Minn.Stat. S 336.4-207 as Northfield did in this case. Therefore 'a suit by the owner-payee against the depositary bank avoids an additional suit and thus resolves the entire dispute in an economical matter.'(citation omitted) Collecting banks are also more convenient defendants. While the forged checks may be drawn on several different banks, the forger often cashes or deposits them all at the same bank, or at banks in the same geographical area. Both the payee and the judicial system suffer when the payee is required to sue drawee banks in a number of jurisdictions to recover on a forged indorsement."

but concluded its opinion by stating:

> "The authority for changing the plain meaning of Minn.Stat. S 336.3-419(3) lies with the Minnesota legislature. Although the people of Minnesota would benefit by a change which would hold a depositary bank directly liable to the true payee of a check which it has paid over a forged indorsement, we hold that Minn.Stat. S 336.3-419(3), as it was passed by the legislature in 1965, provides defenses which absolve the depositary bank of such liability."

The suggestion of the Court in the instant case could be accomplished by legislation which would strike the phrase "~~, including a depositary or collecting bank,~~" from Section 336.3-419(3).

GRASSMAN v. MINNESOTA BOARD OF BARBER EXAMINERS

Grassman v. Minnesota Board of Barber Examiners, 304 N.W.2d 909 (May 1, 1981) was an action challenging both the validity of a statute (Section 154.03) which limits to two the number of apprentices who may be employed in any barber shop and also rules of the Board of Barber Examiners regulating closing hours for shops and establishing trade areas within the state to effectuate regulation of barbering. The trial court invalidated the closing hour regulations and statutory apprentice rules on equal protection grounds, but upheld the trade area rules.

The Supreme Court upheld the trial court on the issue of closing hours and the statutory apprentice rule, comparing the situation of barbers with that of cosmetologists who are not similarly regulated and stating:

> "In view of the fact that barbers and cosmetologists are similarly situated, the regulations deemed necessary to the orderly functioning of the barbers should be equally applicable to the cosmetologists unless a rational basis for a distinction exists. *** we conclude that the trial court did not err when it held that the subject statute and regulations are violative of the equal protection guarantee of the federal and state constitutions."

The Court reversed the trial court on the matter of trade areas, holding that the concept embodied in rules of the board was also a denial of equal protection.

Because two of the issues in this case involved rules of the Board of Barber Examiners which were declared invalid as a denial of equal protection, it appears that no legislation on these points is necessary or desirable. On the third issue, that of the employment of apprentices, the opinion renders

invalid the statutory provision limiting the number of apprentices in a shop to two. This statutory deficiency could be remedied by legislation substantially as follows:

"154.03 [APPRENTICES MAY BE EMPLOYED.]

No registered apprentice may independently practice barbering, but he may as an apprentice do any or all of the acts constituting the practice of barbering under the immediate personal supervision of a registered barber. ~~Not more than two apprentices may be employed in any barber shop and each such apprentice must be under the immediate personal supervision of a separate registered barber.~~ "

GRIEBEL v. TRI-STATE INSURANCE CO. OF MINN.

In Griebel v. Tri-State Insurance Co. of Minn., 311 N.W.2d 156 (July 31, 1981) Griebel was receiving workers' compensation benefits for temporary total disability as a result of a work-related back injury, when he sustained a fractured leg in an automobile accident. He brought suit against his no-fault insurer for income loss benefits alleged to be payable as a result of the automobile accident. The no-fault insurer appealed from an order of the trial court granting Griebel's motion for summary judgment.

As stated by the Court:

> "The issue in this case, however, is whether a person already receiving temporary total disability benefits may also collect no-fault income loss benefits due to a second accident that produces an injury unrelated to the first injury, causing an independent total disability."

The insurer contended that Section 65B.44, Subdivision 3, governing the payment of income loss benefits did not apply to a person who was not both working and collecting wages at the time of the accident. Griebel contended that workers' compensation benefits are "income" and that he need not actually be working at the time of injury so long as the injury would prevent him from working.

The Supreme Court agreed with Griebel and affirmed the trial court's decision awarding no-fault income loss benefits, holding that

> "Griebel is entitled to receive from his no-fault carrier income loss benefits, plus interest, equaling 85% of his average weekly wage less the amount of workers' compenstion benefits paid."

The Court concluded:

> "We bring this matter to the attention of the legislature so it may take action should it determine that different treatment of cases arising under similar facts is appropriate."

Thus the Legislature could if desired add a simple statement to Section 65B.44, Subdivision 3 to the effect that: For purposes of this section, "income" does not include workers' compensation benefits. If, on the other hand, the Legislature agrees with the Court's holding, no legislation appears necessary.

Section 268.09, Subdivision 1

JANSEN v. PEOPLES ELECTRIC COMPANY, INC.

In Jansen v. Peoples Electric Company, Inc., 317 N.W.2d 879 (April 9, 1982) relator, a member of the Electrical Workers Union, was "bumped" from his job as an electrician with Peoples by an electrician with more seniority. This replacement was required under the collective bargaining agreement between the Union and the National Electrical Contractors Association, of which Peoples was a member. The commissioner of economic security ruled Jansen ineligible for unemloyment compensation benefits and the Supreme Court, in a 5-4 decision affirmed the decision of the commissioner.

This case represents a continuing step in a line of cases stemming from the doctrine of "constructive voluntary quit," as enunciated by the Court in the 1958 case of Anson v. Fischer Amusement Corp., 254 Minn. 93, 93 N.W.2d 815, under which individuals have been disqualified from benefits pursuant to Section 268.09, Subdivision 1, which provides that an individual shall be disqualified for benefits if the employee:

> "* * * voluntarily and without good cause attributable to the employer discontinued his employment with such employer."

The Court cited a judicial request to the legislature to consider statutory changes made in Stawikowski v. Collins Elec. Const. Co., 289 N.W.2d 390 (See page 31 of the Report of the Revisor of Statutes Concerning Certain Opinions of the Supreme Court (1980), and concluded that:

> "In response to this request of the legislature to consider statutory changes, the legislature has chosen not to repeal the Anson rule; instead, the legislature has so far left the rule intact in its general

application and has only modified its application in narrow, carefully specified situations. In this context, we do not think we should overrule a statutory interpretation that the legislature has chosen not to overrule."

The dissenting justices noted the long history of alternating judicial and legislative expansion of the constructive voluntary quit rule and stated:

"We should reverse the denial of unemployment compensation benefits and, because of its long, arduous history, agree that the 'constructive voluntary quit' rule of Anson (citation omitted) has had its last legal gasp. Our 1980 opinions (citations omitted) clearly express our intent that Anson be overruled."

Thus if the legislature were to completely overrule the Anson rule, this could be accomplished by an amendment to Section 268.09, Subdivision 1, under which a disqualification for benefits would be:

"limited to separations where the decision whether to go or stay lay at the time with the worker alone and, even then, only if he left his work without good cause."

If, on the other hand, the legislature merely wished to continue its practice of responding on a case by case basis, it could amend Section 268.09, Subdivision 1, Clause (2), at a later point where it states:

"An individual shall not be disqualified under clauses (1) and (2) of this subdivision under any of the following conditions: * * *

(f) The individual is separated from employment due to a seniority provision in a collective bargaining agreement between labor and management or the completion of an apprenticeship program, or segment thereof, approved pursuant to Chapter 178."

Section 309.515, Subdivision 1(b)

LARSON v. VALENTE

The case of Larson v. Valente, 102 S.Ct. 1673 (April 21, 1982) arose out of an attempt by John R. Larson, acting as Minnesota Commissioner of Securities, to apply the registration and reporting requirements of the Charitable Contributions Act (Sections 309.50 to 309.61) to the Holy Spirit Association for the Unification of World Christianity, better known as the Unification Church.

The original Charitable Contributions Act exempted all religious organizations from the requirements of the Act. Laws 1978, Chapter 601, Section 5 however, amended the exemption provision so as to include a "50 percent rule." This 50 percent rule (Section 309.515, Subdivision 1(b)) provided that only those religious organizations that received more than half of their total contributions from members or affiliated organizations would remain exempt from the registration and reporting requirements of the Act.

Valente and other followers of the Unification Church sought a declaration that the Act on its face and as applied to them through the 50 percent rule was invalid under the First and Fourteenth Amendments to the United States Constitution. The Supreme Court, in a 5-4 decision, held that Section 309.515, Subdivision 1(b), in imposing certain registration and reporting requirements upon only those religious organizations that solicit more than 50 percent of their funds from nonmembers discriminates against such organizations in violation of the

establishment clause of the First Amendment, which provides that:

> "Congress shall make no law respecting an establishment of religion ***."

and which is applied to the States by the Fourteenth Amendment.

In concluding its opinion the Court stated:

> "In sum we conclude that the fifty per cent rule of S 309.515-1(b) is not closely fitted to the furtherance of any compelling governmental interest as asserted by appellants, and that the provision therefore violates the Establishment Clause. Indeed, we think that S 309.515(b)'s fifty per cent rule sets up precisely the sort of official denominational preference that the Framers of the First Amendment forbade. Accordingly, we hold that appellees cannot be compelled to register and report on the strength of that provision."

The statutory deficiency disclosed by the holding in Larson v. Valente could perhaps best be remedied by legislation which would reverse the effect of Laws 1978, Chapter 601, Section 6, by reinstating the religious organization exemption as it existed prior to 1978 in substantially the following manner:

309.515 [EXEMPTIONS.]

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

(a) * * *

(b) ~~A religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization, or (2) from a parent organization or affiliated organization, or (3) from a combination of the sources listed in clauses (1) and (2). A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the requirements of sections 309.52 and 309.53. The term "member" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation.~~ Any group or association serving a bona fide relgious purpose when the solicitation is connected with that religious purpose, nor shall sections 309.52 and 309.53 apply when the solicitation is conducted for the benefit of the group or association by any other person with the consent of the group

or association. Nothing contained in sections 309.50 to 309.61 shall prevent a group or association or any other person from voluntarily filing a registration statement or annual report under sections 309.52 and 309.53.

(c) - (f) * * *

LOCKWOOD v. INDEPENDENT SCHOOL DISTRICT NO. 877

Lockwood v. Independent School District No. 877, 312 N.W.2d 924 (December 4, 1981) was a case in which the pressures of serving as a senior high school principal in a rapidly growing suburban school district proved to be the undoing of Ronald K. Lockwood, Sr. Considered for the first time by the Court was the question of whether our Workers' Compensation Act affords compensation to an employee who suffers a disabling mental injury caused by work-related mental stress, in the absence of physical trauma.

The Court examined briefly holdings in other states, a majority of which have held such injury to be compensable, and traced the evolution of our Workers' Compensation Act, specifically Section 176.021, Subdivision 1, which makes an employer liable for compensation "in every case of personal injury or death of his employee arising out of and in the course of his employment without regard to the question of negligence," and Section 176.011, Subdivision 16, which defines "personal injury" as "injury arising out of and in the course of employment and includes personal injury caused by occupational disease."

In reversing the decision of the Workers' Compensation Court of Appeals, which had awarded Lockwood compensation, the Court stated:

> "In the absence of proof that the legislature considered the far-reaching ramifications of extending workers' compensation coverage to employees who are mentally disabled by employment-related stress, we decline to construe the Workers' Compensation Act in a manner probably not intended by that body. * * * the

> issue raised in this case involves a policy determination which we believe should be presented to the legislature as the appropriate policy-making body. If it wishes to extend workers' compensation coverage to mental disability caused by work-related mental stress without physical trauma, it is free to articulate that intent clearly. In the absence of a clearly expressed legislative intent on the issue, however, we will not hold such disability to be compensable."

The inclusion of mental injury or disability in the absence of physical trauma within the scope of our Workers' Compensation Act would represent a step of considerable significance from the policy standpoint. It would apparently involve an amendment to the definition of "personal injury" contained in Section 176.011, Subdivision 16 in order to extend the definition to include "mental injury caused by work-related mental stress, whether or not accompanied by physical trauma."

Section 176.262

NELSON v. PETERSON

In Nelson v. Peterson, 313 N.W.2d 580 (December 17, 1981) plaintiff, who was employed as a petitioners' attorney in the workers' compensation division of the department of labor and industry brought an action against the commissioner of the department challenging the validity of Minnesota Statutes 1981 Supplement, Section 176.262, which was enacted by the 1981 Legislature and provides that:

> "No attorney acting pursuant to Section 176.261 shall be hired or appointed as a compensation judge for a period of two years following termination of service with the division."

The Court observed that while petitioner's attorneys were disqualified from serving as compensation judges, that disqualification was not applied to other employees within the division such as attorneys who represent the State in workers' compensation proceedings, special assistant attorneys general representing the Special Fund, the compensation counsel, and private attorneys representing any party to a proceeding. The Court applied the "rational basis test" of an earlier decision to Section 176.262, under which test any classification of positions was required to be genuine and substantial as opposed to manifestly arbitrary or fanciful and genuine or relevant to the purpose of the law, and concluded:

> "The classifications are not genuine or relevant to the asserted statutory purposes. Moreover, we find that the distinctions which separate those included within the strictures of Section 103 (176.262) from those excluded are manifestly arbitrary and fanciful. For these reasons, we hold that Section 103 violates the equal protection guarantees of the United States and Minnesota Constitutions."

In this instance it appears that the repeal of Section 176.262 may be in order as a means of remedying the statutory deficiency disclosed in the Court's holding.

Section 176.061, Subdivision 8

NELSON v. STATE, DEPT. OF NATURAL RESOURCES

In Nelson v. State Dept. of Natural Resources, 305 N.W.2d (May 1, 1981) Russell Nelson, an employee of the department, was killed while acting within the course and scope of his employment. Workers' compensation benefits were paid to his widow and two minor children. The widow brought a wrongful death action against the third party responsible for the death and obtained a $130,000 settlement, which was distributed by the district court upon her petition.

At issue in the case was a construction of Section 176.061, Subdivision 8, which requires that, in all cases where the State is the employer, any settlement with a third-party is not valid unless prior notice is given the State. Rights of subrogation are granted to the State, copies of documents relating to the suit are required to be served upon the State, and the State is granted a lien for the amount to which it is subrogated.

The court held in its syllabus that:

> "Minn.Stat. S 176.061, Subd. 8 (1980) distinguishes between employees of the state and all other employees and in so doing sets out a classification that does not apply uniformly to a similarly situated group, employees; is not supported by genuine and substantial distinctions between employees of the state and other employees; does not further the purposes of the Workers' Compensation Act, Minn.Stat. S 176.001 et seq. (1980) and therefore violates respondents right to equal protection under the laws. U.S. Const. Amend. XIV."

Because the Court went on to state:

> "It is our view that notice to interested employers is no less important when a petition to distribute proceeds is involved. For that reason, we hold that the failure to provide an interested employer with notice of a petition to distribute the proceeds of a wrongful death action may invalidate the distribution

obtained."

it appears that the proper remedy for the statutory deficiency disclosed by this case would not be to repeal the offending subdivision which, in effect, gives preference to the state as an employer, but rather to amend Subdivision 8 to protect the rights of all employers, substantially as follows:

"Subd. 8. [~~State as~~ Notice to employer.] In every case arising under subdivision 5 when ~~the state is the employer and~~ a settlement between the third party and the employee is made it is not valid unless prior notice thereof is given to the ~~state~~ employer within a reasonable time. If the ~~state~~ employer pays compensation to the employee under the provisions of this chapter and becomes subrogated to the rights of the employee or his dependents any settlement between the employee or his dependents and the third party is void as against the ~~state's~~ employer's right of subrogation. When an action at law is instituted by an employee or his dependents against a third party for recovery of damages a copy of the complaint and notice of trial or note of issue in such action shall be served on the ~~state~~ employer. Any judgment rendered therein is subject to a lien of the ~~state~~ employer for the amount to which it is entitled to be subrogated under the provisions of subdivision 5."

THOMPSON v. ESTATE OF PETROFF

In Thompson v. Estate of Petroff, 319 N.W.2d 400 (May 21, 1982) plaintiff was attacked and injured by Petroff who thereafter died of a gunshot wound sustained during the attack. Her action against the estate of her assailant was summarily dismissed by the trial court on the basis of Section 573.01, which provides:

> "A cause of action arising out of an injury to the person * * * dies with the person against whom it exists, except a cause of action arising out of bodily injuries or death caused by the negligence of a decedent or based upon strict liability, statutory liability or breach of warranty of a decedent, survives against his personal representative. * * *"

The Supreme Court, in reversing the granting of the summary judgment stated:

> "Minnesota's survival statute, Minn.Stat. S 573.01 (1980), which provides that personal injury causes of action survive the death of the defendant only if based on negligence, strict liability, statutory liability, or breach of warranty, violates the equal protection clause of the Minnesota Constitution because no rational basis exists for the nonsurvivability of causes of action arising from intentional torts."

The Court traced the history of the common law, under which all causes of action died with the actor, through its adoption in statutory form by Minnesota's territorial legislature and the subsequent addition of exceptions for negligence (1941) and strict or statutory liability or breach of warranty (1967), and concluded that:

> "Intentional torts have been omitted from the survival statute for no apparent reason other than the legislature's failure to keep up with the development of modern tort law."

In a somewhat unusual action for the Court, the Court

actually, in effect, proposed corrective action when it stated:

> "The survival statute is phrased in the negative; we cannot add language to it in order to render it constitutionally permissible. However we can strike the middle sentence of section 573.01 and leave intact the first and third sentences. * * * The effect of the deletion of the second sentence is that all causes of action will survive the death of either party, except those arising out of the death of an injured plaintiff. (Footnote omitted) For this exception the wrongful death statute, Minn.Stat. S 573.02 (1980) will continue to govern."

While the Legislature is free to do what the Court declined to do; insert "intentional tort" into the list of exceptions to the nonsurvivability of actions, logic would appear to dictate an amendment to Section 573.01 as proposed by the Court, as follows:

> "A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02. ~~It also dies with the person against whom it exists, except a cause of action arising out of bodily injuries or death caused by the negligence of a decedent or based upon strict liability, statutory liability or breach of warranty of a decedent, survives against his personal representatives.~~ All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter."

A bill for an act

relating to statutes; conforming various laws to judicial decisions of unconstitutionality and suggestions for clarity; amending Minnesota Statutes 1982, sections 648.44, subdivision 3; 65B.51, subdivision 1; 154.03; 176.011, subdivision 16; 176.061, subdivision 8; 268.09, subdivision 1; 309.515, subdivision 1; 336.3-419; and 573.01; repealing Minnesota Statutes 1982, sections 176.262; 296.01, subdivision 24; and 296.02, subdivision 7.

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

Section 1. Minnesota Statutes 1982, section 65B.44, subdivision 3, is amended to read:

Subd. 3. [DISABILITY AND INCOME LOSS BENEFITS.] Disability and income loss benefits shall provide compensation for 85 percent of the injured person's loss of present and future gross income from inability to work proximately caused by the nonfatal injury subject to a maximum of $200 per week. Loss of income includes the costs incurred by a self-employed person to hire substitute employees to perform tasks which are necessary to maintain his income, which he normally performs himself, and which he cannot perform because of his injury. For purposes of this section, "income" does not include workers' compensation benefits.

If the injured person is unemployed at the time of injury and is receiving or is eligible to receive unemployment benefits under chapter 268, but the injured person loses his eligibility

for those benefits because of inability to work caused by the injury, disability and income loss benefits shall provide compensation for the lost benefits in an amount equal to the unemployment benefits which otherwise would have been payable, subject to a maximum of $200 per week.

Compensation under this subdivision shall be reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work which he was capable of performing but unreasonably failed to undertake.

For the purposes of this section "inability to work" means disability which prevents the injured person from engaging in any substantial gainful occupation or employment on a regular basis, for wage or profit, for which he is or may by training become reasonably qualified. If the injured person returns to his employment and is unable by reason of his injury to work continuously, compensation for lost income shall be reduced by the income received while he is actually able to work.

Sec. 2. Minnesota Statutes 1982, section 658.51, subdivision 1, is amended to read:

Subdivision 1. [DEDUCTION OF BASIC ECONOMIC LOSS BENEFITS.] With respect to a cause of action in negligence accruing as a result of injury arising out of the operation, ownership, maintenance or use of a motor vehicle with respect to which security has been provided as required by sections 658.41 to 658.71, there shall be deducted from any recovery the value of basic or optional economic loss benefits paid or payable ~~or which will be payable in the future~~, or which would be payable but for any applicable deductible.

Sec. 3. Minnesota Statutes 1982, section 154.03, is amended to read:

154.03 [APPRENTICES MAY BE EMPLOYED.]

No registered apprentice may independently practice barbering, but he may as an apprentice do any or all of the acts constituting the practice of barbering under the immediate personal supervision of a registered barber. ~~Not more than two~~

~~apprentices may be employed in any barber shop and each such apprentice must be under the immediate personal supervision of a separate registered barber.~~

Sec. 4. Minnesota Statutes 1982, section 176.011, subdivision 16, is amended to read:

Subd. 16. [PERSONAL INJURY.] "Personal injury" means injury arising out of and in the course of employment and includes personal injury caused by occupational disease; but does not cover an employee except while engaged in, on, or about the premises where his services require his presence as a part of such service at the time of the injury and during the hours of such service. "Personal injury" includes a mental injury caused by work-related mental stress, whether or not accompanied by physical trauma. Where the employer regularly furnished transportation to his employees to and from the place of employment such employees are subject to this chapter while being so transported, but shall not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him, and not directed against him as an employee, or because of his employment.

Sec. 5. Minnesota Statutes 1982, section 176.061, subdivision 8, is amended to read:

Subd. 8. [~~STATE AS~~ NOTICE TO EMPLOYER.] In every case arising under subdivision 5 ~~when the state is the employer~~ and a settlement between the third party and the employee is made it is not valid unless prior notice thereof is given to the ~~state~~ employer within a reasonable time. If the ~~state~~ employer pays compensation to the employee under the provisions of this chapter and becomes subrogated to the rights of the employee or his dependents any settlement between the employee or his dependents and the third party is void as against the ~~state's~~ employer's right of subrogation. When an action at law is instituted by an employee or his dependents against a third party for recovery of damages a copy of the complaint and notice of trial or note of issue in such action shall be served on the

state employer. Any judgment rendered therein is subject to a lien of the state employer for the amount to which it is entitled to be subrogated under the provisions of subdivision 5.

Sec. 6. Minnesota Statutes 1982, section 268.09, subdivision 1, is amended to read:

Subdivision 1. [DISQUALIFYING CONDITIONS.] An individual separated from employment under clauses (1), (2) and (3) shall be disqualified for waiting week credit and benefits until 4 calendar weeks have elapsed following his separation and he has earned four times his weekly benefit amount in insured work.

(1) [VOLUNTARY LEAVE.] The individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer. For the purpose of this clause, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when: (1) the employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(2) [DISCHARGE FOR MISCONDUCT.] The individual was discharged for misconduct, not amounting to gross misconduct connected with his work or for misconduct which interferes with and adversely affects his employment.

An individual shall not be disqualified under clauses (1) and (2) of this subdivision under any of the following conditions:

(a) The individual voluntarily discontinued his employment to accept work offering substantially better conditions of work or substantially higher wages or both;

(b) The individual is separated from employment due to his own serious illness provided that such individual has made reasonable efforts to retain his employment;

An individual who is separated from his employment due to his illness of chemical dependency which has been professionally diagnosed or for which he has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment he knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain his employment.

(c) The individual accepts work from a base period employer which involves a change in his location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues his employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(d) The individual left employment because he had reached mandatory retirement age and was 65 years of age or older;

(e) The individual is terminated by his employer because he gave notice of intention to terminate employment within 30 days. This exception shall be effective only through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which he receives his normal wage or salary which is equal to or greater than his weekly benefit amount;

(f) The individual is separated from employment due to a seniority provision in a collective bargaining agreement between labor and management or the completion of an apprenticeship

program, or segment thereof, approved pursuant to chapter 178.

(3) [DISCHARGE FOR GROSS MISCONDUCT.] The individual was discharged for gross misconduct connected with his work or gross misconduct which interferes with and adversely affects his employment and provided further that the commissioner is empowered to impose a total disqualification for the benefit year and to cancel part or all of the wage credits from the last employer from whom he was discharged for gross misconduct connected with his work.

For the purpose of this clause "gross misconduct" shall be defined as misconduct involving assault and battery or the malicious destruction of property or the theft of money or property of a value of $100 or more or arson or sabotage or embezzlement or any other act the commission of which amounts to a felony or gross misdemeanor.

(4) [LIMITED OR NO CHARGE OF BENEFITS.] Benefits paid subsequent to an individual's separation under any of the foregoing clauses, excepting clauses (2)(c) and (2)(e), shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

Benefits paid subsequent to an individual's failure, without good cause, to accept an offer of suitable re-employment shall not be used as a factor in determining the future contribution rate of the employer whose offer of re-employment he failed to accept or whose offer of re-employment was refused solely due to the distance of the available work from his residence, the individual's own serious illness or his other employment at the time of the offer.

(5) An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after his separation from employment with the employer.

(6) [DISCIPLINARY SUSPENSIONS.] An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less

resulting from his own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

Sec. 7. Minnesota Statutes 1982, section 309.515, subdivision 1, is amended to read:

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

(a) Charitable organizations:

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

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

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

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

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

(b) A ~~religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization, or (2) from a parent organization or affiliated organization, or (3) from a combination of the sources listed in clauses (1) and (2).~~ A ~~religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the requirements of sections 309.52 and 309.53.~~

The term "member" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation. Any group or association serving a bona fide religious purpose when the solicitation is connected with that religious purpose, nor shall sections 309.52 and 309.53 apply when the solicitation is conducted for the benefit of the group or association by any other person with the consent of the group or association. Nothing contained in sections 309.50 to 309.61 shall prevent a group or association or any other person from voluntarily filing a registration statement or annual report under sections 309.52 and 309.53.

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

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

(e) A charitable organization soliciting contributions for any person specified by name at the time of the solicitation if all of the contributions received are transferred to the person named with no restrictions on his expenditure of it and with no deductions whatsoever.

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

Sec. 8. Minnesota Statutes 1992, section 336.3-419, is amended to read:

336.3-419 [CONVERSION OF INSTRUMENT; INNOCENT

REPRESENTATIVE.]

(1) An instrument is converted when

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged endorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this chapter concerning restrictive endorsements a representative, ~~including a depositary or collecting bank,~~ who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item endorsed restrictively (sections 336.3-205 and 336.3-206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor.

Sec. 9. Minnesota Statutes 1982, section 573.01, is amended to read:

573.01 [SURVIVAL OF CAUSES.]

A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02. ~~It also dies with the person against whom it exists, except a cause of action arising out of bodily injuries or death caused by the negligence of a decedent or based upon strict liability, statutory liability or breach of warranty of a decedent, survives against his personal representatives.~~ All other causes of action by one against

another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter.

Sec. 10. [REPEALER.]

Minnesota Statutes 1982, sections 176.262; 296.01, subdivision 24; and 296.02, subdivision 7, are repealed.