

Consumer Law

Prepared by: Ron Elwood, Advocate
651-222-3749, ext. 109
relwood@mnlsap.org

Attorney's Fees in Suits by Funeral Providers

Chapter 71

Adds Minn. Stat. § 149A.98

Effective August 1, 2005

Provides that attorney's fees may be awarded to prevailing funeral providers in actions to recover fees for services, provided the funeral provider complied with the requirements of Chapter 149A in connection with the provision of those services.

Consumer Notification of Data Security Breach

By Private Business

Chapter 167

Adds Minn. Stat. § 325E.61

Effective January 1, 2006

Provides that any entity conducting business in the state that owns or licenses data must expeditiously notify consumers if a security breach occurs that compromises consumers' personal information and information is believed to be obtained by an unauthorized person. Personal information includes social security, driver's license, bank account, or credit card number. Subject businesses must also notify all credit reporting agencies if the breach affects more than 500 consumers. Notification may be delayed if a law enforcement agency makes an affirmative determination that notification will impede a criminal investigation. Banks are exempt. The Attorney General is obligated to enforce under Minn. Stat. § 8.31.

By State Government Agency

Chapter 163, Section 21

Adds Minn. Stat. § 13.055

Effective August 1, 2005

As part of the Omnibus Data Practices Act, state agencies that collect private, confidential, and personal information must notify individuals promptly when their information is acquired by an unauthorized person. Credit reporting agencies must also be notified if more than 1,000 persons are affected.

Farmer-Lender Mediation Program

Chapter 107, Article 1, Section 55

Affects Minn. Stat. § § 336.9-601, subsections (h) and (i); 550.365; 559.209; 582.039; and 583.20 to 583.32

Effective May 27, 2005 and expires June 30, 2009

Extends the Farmer-Lender Mediation Program four more years, until June 30, 2009. Under the program, a creditor must offer a farmer the opportunity to renegotiate, restructure, or resolve a debt before beginning collection.

Garnishment Exemption

Chapter 137

Amends Minn. Stat. § 550.37, subd. 4

Effective June 3, 2005

Adds the debtor's interest, not exceeding \$1,225, in wedding rings and other culturally recognized symbols of marriage, exchanged at the time of the wedding and in the debtor's possession, as an exempt item from garnishment or attachment.

Insurance Steering

Chapter 140

Amends Minn. Stat. § 72A.201, subd. 6

Effective August 1, 2005

Prohibits insurance adjusters and claims agents from using coercion, threats, incentives, inducement or intimidation against an insured to use a particular shop to repair a damaged vehicle. Requires insurers to issue to claimants an "advisory" that states the person is free to choose his or her own repair shop.

Mortgage Brokers

Chapter 118

Adds Minn. Stat. § 58.125

Effective August 1, 2005

Prohibits any person convicted of a crime involving dishonesty or breach of trust from becoming a mortgage broker or working for a brokerage firm in Minnesota, unless the person receives written consent of the Department of Commerce. Provides for a de minimis exception. To meet the exception, all of the following conditions must be satisfied. The applicant must: 1) have only one conviction, 2) the offense must have been punishable by a prison term of less than one year and a fine of less than \$1,000, 3) have served no jail time, 4) the conviction must have been entered at least five years prior to application, and 5) the offense must not have involved a financial institution or residential mortgage loans.

Payroll Cards

Chapter 158

Amends Minn. Stat. § 177.23 by adding subd. 4

Adds Minn. Stat. § 177.255

Effective June 3, 2005 and expires May 31, 2007

Authorizes employers to pay wages in the form of “payroll cards,” which are debit/stored value cards. Requires full disclosure by the employers or the issuer of the cards, if different from the employer, of possible fees and voluntary, written consent for their use. Prohibits employers from charging undisclosed fees or the deduction of inactivity or dormancy fees. Prohibits employers from requiring the use of payroll cards as a condition of hire or continued employment. Prohibits the use of payroll cards as collateral for payday loans. Requires that if materials about payroll cards are offered in a language other than English, written disclosures and consent must be provided in that language. Requires issuers of payroll cards in the state to file with the Department of Labor and Industry, and requires a report to the Legislature by February 15, 2007 on the use of payroll cards.

Courts

Prepared by: Ron Elwood, Advocate
651-222-3749, ext. 109
relwood@mnlisap.org

Filing Fees

*Chapter 136, Article 14, Section 3
Amends Minn. Stat. § 358.021, subd. 2
Effective July 1, 2005*

Raises civil initial filing fee for movants, respondents, or intervening parties from \$235 to \$240.

Dissolution of Marriage and Other Filing Fees

*Chapter 164, Sections 2 and 3
Amends Minn. Stats. § § 357.021, subd. 2 and 518.005 by adding subd. 6
Effective July 1, 2005*

Specifies that a fee of \$55 will be charged for filing a motion or response to a motion for child support. Adds a fee of \$50 for filing the initial pleading in proceedings for dissolution of marriage, legal separation, annulment, or proceedings to establish child support obligations. States that this fee is in addition to any other prescribed by rule or law.

Waiver of Filing Fee for Restraining Order

*Chapter 136, Article 17, Section 45
Amends Minn. Stat. § 609.748, subd. 3a
Effective August 1, 2005, for crimes committed on or after that date.*

Waives the filing fee for a restraining order if the petition alleges an act of criminal sexual conduct. Currently, filing fees are waived for harassment and stalking crimes only.

Domestic Abuse

*Prepared by: Reggie Wagner, Staff Attorney
651-222-3749, ext. 107
rwagner@mnlsap.org*

Prohibition of Retaliation by Employers Against Employees Taking Leave to Obtain Orders for Protection and Restraining Orders

Chapter 136, Article 8, Section 20

Amends Minn. Stat. § 518B.01 by adding subd. 23

Amends Minn. Stat. § 609.748 by adding subd. 10

Effective August 1, 2005 and applies to crimes committed after that date.

Provides that employees may not be discharged, disciplined, threatened, penalized, or otherwise discriminated against for taking time off to seek relief under Chapter 518B, including seeking Orders for Protection and Restraining Orders. Requires employees to provide 48 hours notice prior to taking time off, unless the health or safety of the employee or her child (ren) would be imminently endangered or notice is otherwise impracticable. Employers may request verification of the reason for the leave. Violations constitute a misdemeanor, and violators are subject to actions for damages, including costs and reasonable attorney's fees, and equitable relief, including reinstatement.

Prohibition of Retaliation by Employers Against Employees Taking Leave to Appear in Criminal Proceedings

Chapter 136, Article 8, Section 23

Amends Minn. Stat. § 611A.036, subd. 1 and adds subds. 2 - 7

Effective August 1, 2005 and applies to crimes committed after that date.

Expands on the current provision in law that prohibits employer retaliation against a victim or witness who takes a reasonable time off from work to answer a subpoena or answer the request of a prosecutor. Allows a victim or witness to take reasonable time off from work to answer a subpoena or answer the request of a prosecutor. Allows the victim of a heinous crime, as well as the victim's spouse or next of kin, to take reasonable time off from work to attend proceedings involving prosecution of the heinous crime. The victim and his or her family member need not be asked to attend or issued a subpoena for these protections to vest.

Prohibits employer retaliation against an employee who takes a reasonable time off from work to attend a criminal proceeding as provided in this section. Provides that an employee who is absent from work must give advance notice, unless an emergency prevents the employee from doing so. An employer may ask for verification as to the employee's whereabouts, but any information provided must be kept confidential. Provides the same criminal penalties as found in section 20. Provides the same civil remedies as found in section 2. Defines "heinous crime" to include acts of homicide, first-degree assault, and criminal sexual conduct committed with force or involving a minor.

Domestic Abuse No Contact Order

Chapter 136, Article 17, Section 5

Amends Minn. Stat. § 518B.01, subd. 22

Effective August 1, 2005

Expands the definition of a “domestic abuse no contact order” to include orders in criminal proceedings relating to violations of protection orders, violations of domestic abuse no contact orders, and harassment/stalking.

Qualified Domestic Violence-Related Offenses Modified

Chapter 136, Article 17, Section 8

Amends Minn. Stat. § 609.02, subd. 16

Effective August 1, 2005, for crimes committed on or after that date.

Adds the crime of domestic assault by strangulation to the list of qualified domestic violence-related offenses. Enhanced penalties apply to persons who commit more than one qualified domestic violence-related offense within a certain time frame.

Adds Domestic Assault by Strangulation (*See Below*) to the List of Assaults Subject to Firearm Restrictions

Chapter 136, Article 17, Section 12

Amends Minn. Stat. § 609.2242, subd. 3

Effective August 1, 2005, for crimes committed on or after that date.

Provides that if any type of domestic assault took place and the offender owns or possesses a firearm and used it in any way during the commission of the assault, the court shall order the firearm be summarily forfeited. The court may also order that the person be prohibited from possessing any firearm for any period longer than three years or for the remainder of the person’s life.

Provides that Domestic Assault by Strangulation is a Felony

Chapter 136, Article 17, Section 13

Adds Minn. Stat. § 609.2247

Effective August 1, 2005, for crimes committed on or after that date.

Provides that domestic assault by strangulation is a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000. Defines the terms “family or household members” and “strangulation.” “Family or household member” includes spouses, former spouses, parents, children, blood relatives, persons with a child in common, persons residing together, persons who formerly resided together, and persons who are or have been involved in a significant romantic relationship. “Strangulation” means “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.”

Authorizes Stepparent to Seek Restraining Order

Chapter 136, Article 17, Section 44

Amends Minn. Stat. § 609.748, subd. 2

Effective August 1, 2005, for crimes committed on or after that date.

Authorizes a stepparent to seek a restraining order on behalf of a minor. Currently, only a parent or guardian can seek a restraining order for a minor.

Waiver of Filing Fee for Restraining Order

Chapter 136, Article 17, Section 45

Amends Minn. Stat. § 609.748, subd. 3a

Effective August 1, 2005, for crimes committed on or after that date.

Waives the filing fees for a restraining order if the petition alleges an act of criminal sexual conduct. Currently, filing fees are waived for harassment and stalking crimes only.

Harassment and Stalking Crimes

Chapter 136, Article 17, Section 46

Amends Minn. Stat. § 609.749, subd. 2

Effective August 1, 2005, for crimes committed on or after that date.

Modifies the harassment and stalking crimes to include new forms of technology. Provides that in the case of wireless or electronic communication, the case may be prosecuted where the actor or victim resides. (Currently, the case may only be prosecuted at the place where the call is either made or received, or where the letter or package is either sent or received.)

Family Law

Prepared by: Reggie Wagner, Staff Attorney
651-222-3749, ext. 107
rwagner@mnlisap.org

Marriage Dissolution Spousal Maintenance Collection Authority

Chapter 116

Amends Minn. Stats. §§ 518.54, subd. 4a; 518.54, subd. 14; 518.54, and 518.551, subd. 1
Effective May 27, 2005

In late 2004, the Department of Human Services (DHS) had announced that it would no longer collect spousal maintenance if there was no child support obligation being enforced as well. The Minnesota Legislature passed new legislation on May 26, 2005 relating to spousal maintenance only cases. DHS is authorized to provide [income withholding only services](#) to spousal maintenance only cases upon request of one of the parties. Full child support services are not available unless a child support obligation is being enforced in addition to the spousal maintenance obligation. Expands the definition of a support order to include “spousal maintenance order” and clarifies that an obligation for spousal maintenance is not a IV-D case. Adds a new subdivision providing that an obligation for spousal maintenance only is only eligible for income withholding only services. This change in law and policy does not affect cases in the child support system that have a child support obligation being collected and enforced in addition to the spousal maintenance obligation. For more information on current DHS policy, see http://www.dhs.state.mn.us/main/groups/children/documents/pub/dhs_id_029202.hcsp

Domestic Abuse Hearings – Safety Focus Provided

Chapter 76

Amends Minn. Stat. §518B.01, subd. 6
Effective May 25, 2005

This Act limits required findings when awarding custody and parenting time in the context of a domestic abuse hearing. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. Findings under section 257.025, 518.17, or 518.175 are not required with respect to the particular best interest factors not considered by the court.

Child Support Provisions

Chapter 159, Article 4

Amends Minn. Stats. §§ 256.978, subd. 2; 518.551, subd. 5; 518.68, subd. 2 and 548.091, subd. 1a
Effective August 1, 2005

Allows the public authority to request or obtain location and asset information about program participants from third-party contractors of employers, utility companies, insurance companies, labor organizations, and financial institutions. Changes the requirement that only support or maintenance obligations currently being paid are deductible from total monthly income. Allows, as a deduction from monthly income, the amount ordered for support or maintenance. Does not allow

orders for arrears to be deducted from total monthly income. Changes the administrative process for suspending and reinstating the collection of child care support. Adds to the required notice a statement that the public authority may suspend or resume collection of child care expenses if the conditions of § 518.551, subd. 5, paragraph (b), are met. Provides that upon 12 consecutive months of complete and timely payment of current support and court ordered arrears, an obligor may bring a motion to stop interest payments on the overdue support. Currently the requirement is 36 months of complete and timely payment.

Child Support Guidelines Reform

Chapter 164

Effective January 1, 2007 and applies to orders adopted or modified after that date.

This act, which is effective January 1, 2007 and applies to orders adopted or modified after that date, unless otherwise noted, reforms the law related to child support. It establishes new guidelines, using the income shares model, and new calculations for determining child support obligations. It also increases fees related to dissolution of marriage and child support, which are effective July 1, 2005. NOTE: The Act instructs the Revisor of Statutes to create a new Chapter in the first edition of or supplement to Minnesota Statutes published after June 30, 2005, that contains the provisions in Chapter 518 that relate to child support, so statutory references are likely to be different than what is in the Act as passed by the Legislature. Key provisions include:

Six month review of orders

Chapter 164, Section 4

Adds a new section, Minn. Stat. § 518.1781

Requires a request for six-month review hearing form to be attached to a decree of dissolution or legal separation or an order initially establishing child custody, parenting time, or support rights. If a parent requests a hearing within six months, the court must review, as soon as practicable, whether child support is current and whether both parties are complying with the parenting time provisions of the order. Provides that the obligor has the burden to present evidence to establish that child support payments are current. Also requires DHS to develop a form to submit payment information to the parties and the court.

Definitions

Chapter 164, Section 5

Amends Minn. Stat. § 518.54

Subdivisions 1 through 27 provide definitions used in this Act. Included are the new definitions for support money or child support; obligor; public authority; parental income for child support; appropriated veterans' benefits; basic support; gross income; joint child; nonjoint child; parenting time; payor of funds; potential income; primary physical custody; social security benefits; split custody; and survivors' and dependents' educational assistance.

Providing income information

Chapter 164, Section 6

Amends Minn. Stat. § 518.551, subd. 5b

Clarifies that in any case where child support must be determined, the parties shall serve and file a financial affidavit disclosing all sources of gross income with their initial pleadings or motion.

Child support debt/arrearage management

Chapter 164, Sections 7 and 12

Adds Minn. Stat. § 518.6197 and Amends Minn. Stat. § 518.68, by adding subd. 8

Allows the parties, including the public authority, to compromise unpaid support owed by one party to another, whether or not reduced to a judgment. Allows the parties, including the public authority, to compromise unpaid support owed by one party to another, whether or not reduced to a judgment.

Modification of orders

Chapter 164, Section 10

Amends Minn. Stat. § 518.64, subd. 2

Clarifies language and updates cross-references. Adds emancipation of a child as a basis for modification of child support or maintenance. States that it is a substantial change in circumstances if: 1) application of child support guidelines results in a court order that is at least 20 percent and at least \$75 per month higher or lower than the current support order or 2) the gross income of the obligee or obligor has decreased by at least 20 percent through no fault or choice of the party. A child support order is not presumptively modifiable because a party becomes responsible for the support of a nonjoint child born after an existing order. Provides that an enactment, amendment or repeal of law does not constitute a substantial change in circumstances. There may be no modification of an existing child support order during the first year following enactment of this law unless: there is at least a 20 percent change in the gross income of the obligor; there is a change in the number of joint children the obligor is supporting; the child becomes disabled; or both parents consent to the modification. Allows that the first modification of support under this law may be limited if it will cause hardship for either the obligee or obligor.

Child care exception

Chapter 164, Section 11

Amends Minn. Stat. § 518.64, by adding subd. 7

Allows the court to reduce the amount allocated for child care expenses based on a substantial decrease in these expenses as of the date the expense is decreased.

Notification regarding child care collections

Chapter 164, Section 13

Amends Minn. Stat. § 518.68, subd. 2

Adds to the required notification form that the public authority may suspend or resume collection of child care expenses when either party informs the public authority that no child care costs are being incurred and the public authority verifies this information. Adds to the required notification form that child support may be modified, increased or decreased if either the obligor or obligee is laid off or receives a pay reduction. This modification takes effect when ordered by the court and will only relate back to the time the motion is filed. The court cannot reduce support retroactively.

Calculation of gross income

Chapter 164, Section 14

Adds Minn. Stat. § 518.7123

Provides a nonexclusive list of sources of gross income. Defines income that is not included in the calculation of gross income.

Income from self-employment or operation of a business

Chapter 164, Section 15

Adds Minn. Stat. § 518.7125

Defines gross income as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operations. Provides what is excluded from ordinary and necessary expenses.

Computation of child support obligations

Chapter 164, Section 16

Adds Minn. Stat. § 518.713

This provision sets out the calculations used to determine a parent's child support obligation and operates as an "outline" of sorts for calculating support orders.

Deviations from child support guidelines

Chapter 164, Section 16

Adds Minn. Stat. § 518.714

Provides a list of factors the court must take into consideration in setting or modifying child support or in determining whether to deviate upward or downward from the guidelines. Allows the court to receive evidence to determine if the guidelines should be exceeded or modified. Payments assigned to public authority. A court may not impose a downward deviation from the guidelines if payments are assigned to the public authority unless the court makes specific findings that there would be an extreme hardship on the obligor. Provides that joint legal custody is not a reason for deviation from the guidelines. Allows a downward deviation if the obligor can establish they do not have enough for the self-support reserve.

Deduction from gross income for nonjoint children

Chapter 164, Section 20

Adds Minn. Stat. § 518.717

Provides the calculation for the credit for nonjoint children, using the table of basic support and limiting the deduction to two children.

Social security or veterans' benefit payments received on behalf of the child

Chapter 164, Section 21

Adds Minn. Stat. § 518.718

Defines when this benefit is considered gross income and when it is subtracted from the obligor's net child support obligation.

Medical support

Chapter 164, Section 22

Adds Minn. Stat. § 518.719

Subdivisions 1 through 18 address the medical support obligation, determining appropriate health care coverage, unreimbursed and uninsured medical expenses, employer and union requirements, and health plan requirements among other things.

Child Care Support

Chapter 164, Section 23

Adds Minn. Stat. § 518.72

Divides the work-related or education-related child care costs of joint children between the obligor and obligee based on their proportionate share of the parties' combined monthly parental income for determining child support. Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of a joint child. The Department of Human Services shall develop tables to calculate the applicable credit based upon the custodial parent's parental income for determining child support. For obligors who meet the eligibility requirements (Child Care Assistance Program) under Minn. Stat. § 119B, the Court is required to order child care support based upon the amount the obligor's co-pay would be under the state program IF the obligee is receiving assistance under § 119B.

Parenting expense adjustment

Chapter 164, Section 24

Adds Minn. Stat. § 518.722

Provides a reduction in basic support order of 12% when parenting time awarded is between 10% and 45%. No reduction in parenting time awarded is less than 10%. If equal time (45.1% or more), subtract obligations and divide in half (like Hortis-Valento). This adjustment reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses. Also provides that in the absence of

other evidence, there is a rebuttable presumption that each parent has 25 percent of the parenting time for each joint child.

Ability to pay; self-support adjustment

Chapter 164, Section 25

Adds Minn. Stat. § 518.724

There is a self-support reserve of 120% of Federal Poverty Guideline for 1-person, to ensure that payment of child support does not reduce income obligor's income below the poverty level. Minimum order is \$50 for 1-2 children, \$75 for 3-4, \$100 for 5 or more.

Guideline used in child support determinations

Chapter 164, Section 26

Adds Minn. Stat. § 518.725

Sets out the table for determining basic support that is to be apportioned between the parents based upon their share of the combined income available for support of the child (ren). Allows the court to order a basic support obligation that exceeds the income limit if it finds a child has a disability or other substantial, demonstrated need and that the additional support will directly benefit the child. Sets the income cap at \$15,000 a month combined income and states that the dollar amount for the cap must be adjusted July 1 of every even-numbered year to reflect cost-of-living changes. Allows the court to derive a support order without specifically following the guidelines if a child support order involves more than 6 children.

Worksheet and interactive web-based calculator required

Chapter 164, Section 27

Adds Minn. Stat. § 518.729

Instructs DHS to create and publish a worksheet to assist in calculating child support. DHS must update the worksheet by July 1 each year. Requires interactive version of the worksheet be available on the DHS website.

Study of economic impact of child support guidelines

Chapter 164, Section 27

Instructs DHS to contract with a private provider to conduct an economic impact of the child support guidelines contained in this act. The study must be completed no later than January 30, 2006.

Health Law

Prepared by: Kathleen McDonough, Staff Attorney
651-222-3749 ext. 102
kmcdon@mnlsap.org

Conforming to Federal Medicare Prescription Drug Coverage

Chapter 17

Amends Minn. Stats. §§ 62A.31; 62A.315; 62A.316; 62A.318; 62A.36; 62L.12; 62Q.01; 256.9657; 295.53; and 297I.15

Various Effective Dates

Amends Minnesota law to conform to changes in federal law which adds prescription drug coverage under Medicare, Part D. Part D will be available starting January 1, 2006, is voluntary, requires payment of premiums and will be available only through private sector, stand-alone prescription drug plans (PDPs) or as part of a managed care preferred provider plan known as “Medicare Advantage.”

MinnesotaCare Eligibility for Members of Military

Chapter 59

Amends Minn. Stat. § 256L.07 by adding new subd.

Effective May 20, 2005

Provides that members of the military and their families who voluntarily disenroll from MinnesotaCare when called to active duty are exempt from the 4-month waiting period. Income and asset increases reported at reenrollment are disregarded for six months.

Providers Submission of Claims to Health Plans

Chapter 77, Section 6

Amends Minn. Stat. § 62Q.75

Effective August 1, 2005

Requires that health care providers and facilities must submit their charges to health plans within six months. A health care provider or facility that does not submit charges within the six month period will not be reimbursed by the health plan and may not collect the charge from the recipient or other payer. Provides an exception for providers who have had a significant disruption to normal business operations.

Organ and Tissue Transplants

Chapter 98

Amends Minn. Stats. §§ 256B; 256D; and 256L

Effective August 1, 2005

Strikes language limiting medical assistance coverage of organ and tissue transplants to those covered by Medicare or approved by the advisory committee on organ and tissue transplants.

High School Students' Possession of Pain Relief Medications

Chapter 126

Amends Minn. Stat. § 121A.222

Effective August 1, 2005

Allows high school students to possess and properly use nonprescription pain relief medication if the parent or guardian provides written authorization to the school. Allows school to revoke authorization if it determines student is abusing privilege.

Omnibus Insurance Bill

Chapter 132

Effective August 1, 2005

Open enrollment

Chapter 132, Section 10

Amends Minn. Stat. § 62A.136

Extends “six-month open window” for enrolling in Medicare supplement insurance to people who drop Medicare Part B because they obtain coverage through a spouse. During the “open window” period the person cannot be turned down for health reasons.

Medicare supplement insurance

Chapter 132, Section 12

Amends Minn. Stat. §62A.316

Changes Medicare supplement preventive care coverage to conform to Medicare coverage of preventive care. Also clarifies that certain services must be provided if they are not otherwise covered under Medicare, Part D.

Denial of coverage due to attempted suicide

Chapter 132, Section 16

Minn. Stat. § 62Q.471

Extends prohibition on denials of health coverage on the basis of attempted suicide.

Human Services Forecast Adjustment Bill

Chapter 155

Medical Assistance ineligibility due to uncompensated asset transfers

Chapter 155, Article 3, Section 1

Amends Minn. Stat. § 256B.0595

Effective for transfers occurring on or after July 1, 2005

Provides that if an uncompensated asset transfer is reported after the date that advance notice of a period of ineligibility is provided and the person received medical assistance services during what would be a period of ineligibility, a cause of action exists against the transferee for the cost of medical assistance services provided.

Irrevocable trusts

Chapter 155, Article 3, Section 7

Amends Minn. Stat. § 501B.895

Effective for trusts created on or after July 1, 2005

Provides that any irrevocable inter-vivos trust or similar device created on or after July 1, 2005 containing assets or income shall become revocable for purposes of determining eligibility for medical assistance long-term care services. This section does not apply to supplemental needs trusts.

Health services policy committee

Chapter 155, Article 3, Sections 2, 3 and 4

Amends Minn. Stat. § 256B.0625

Effective July 1, 2005

Requires the Commissioner of Human Services to establish a 13-member Health Services Policy Committee to advise the Commissioner regarding the administration of health services covered under the medical assistance, general assistance medical care and MinnesotaCare programs.

Prior authorization

Chapter 155, Article 3, Section 6

Amends Minn. Stat. § 256B.0625, subd. 13f

Effective July 1, 2005

Allows the Commissioner of Human Services to require prior authorization for up to 180 days for any drug approved by Federal Drug Administration on or after July 1, 2005.

Mental Health Services

Chapter 165, Article 1, Sections 2 and 3

Amends Minn. Stat. §§ 256.9693 and 256B.0624 by adding subd. 4a

Effective August 1, 2005

Allows the Commissioner to authorize additional inpatient hospital treatment beyond 45 days. Also allows the Commissioner to approve a crisis response provider based on an alternative plan that will result in increased access.

Children's mental health

Chapter 165, Article 2, Section 1

Effective June 4, 2005

Review of foster care status

Amends Minn. Stat. § 260C.141, subd. 2

Makes the following changes when a child is placed voluntarily in foster care due solely to the child's developmental disability or emotional disturbance:

1. Filing of a child in need of protection services (CHIPS) petition is delayed until the 13th month as allowed under federal regulations. The county must make a report to the court on the child's status in placement.
2. The contents of the report to the court must include the child's individual mental health treatment plan or the child's individual interagency intervention plan.
3. If the child is placed due to developmental disability, the report to the court shall include the child's individual service plan, the child's individual program plan, the child's waiver plan or the child's individual interagency intervention plan.
4. When the court finds it is in the best interest of the child, voluntary placement will be continued.

Dispositions and written findings

Amends Minn. Stats. § § 260C.193, subd. 2; 260C.201, subs. 1 and 2; and 260C.205

1. Directs the court to consider the report of the child's health or mental health care provider before making a disposition in a case.
2. Clarifies that mental disability includes an emotional disturbance as defined in the Comprehensive Children's Mental Health Act.
3. Provides that for a child in foster care because the child needs treatment, the court's findings shall include whether the child has mental health needs that must be considered, consideration given to treatment recommendations, consideration given to parents' preferences, and consideration given to cultural appropriateness.

4. Provides that out-of-home placement plan shall include the child's mental health treatment provider.

Civil commitment

Chapter 165, Article 3

Amends Minn. Stats. § § 253B.02, subd. 7 and 9; 253B.05, subd. 2; and 609.2231, subd. 3

Effective August 1, 2005

1. Provides that advanced practice registered nurses can serve in the roles of examiner or health officer under the Commitment Act.
2. Provides that physicians, physicians assistants, and advance practice registered nurses must be knowledgeable, trained and practicing in the diagnoses and treatment of mental illness or mental retardation in order to recommend to the facility head that an individual poses a danger of harm to self or others.
3. Provides that a patient's assault of a treatment facility employee is a felony.

Omnibus Data Practices Act

Prepared by: Kathleen McDonough, Staff Attorney
651-222-3749 ext. 102
kmcdon@mnl.sap.org

Charges for Copies of Data

Chapter 163, Section 8
Amends Minn. Stat. § 13.03, subd. 3
Effective August 1, 2005

Provides that if a person requests 100 or fewer pages of black and white letter or legal size paper copies of public data, the responsible authority may charge no more than 25 cents for each page copied. Previously, the person was charged actual costs of searching for and retrieving the data, including the cost of employee time.

State Agencies Disclosure of Security Breach

Chapter 163, Section 21
Amends Minn. Stat. § 13.055
Effective August 1, 2005

Requires that a state agency that collects, creates, receives, maintains or disseminates private or confidential data must disclose any breach of the security of the data.

Education Record of Child with a Disability

Chapter 163, Section 32
Amends Minn. Stat. § 13.32 by adding subd. 10
Effective August 1, 2005

Clarifies that nothing in the data practices act shall be construed as limiting the frequency of inspection of the educational records of a child with a disability. An agency or institution may not charge a fee to search for or retrieve the educational records but may charge a fee that reflects the costs of reproducing the records, except when to do so would impair the ability of the child's parent or guardian to exercise their right to inspect and review the records.

Office of Health Facility Complaints Investigative Data

Chapter 163, Section 36
Amends Minn. Stat. § 13.3805 by adding new subd. 3
Effective August 1, 2005

Specifies that investigative data held by the Department of Health's Office of Health Facility Complaints are subject to the Vulnerable Adults Act data classifications except that the identity of a substantiated perpetrator is public data.

Licensing Data

Chapter 163, Section 40

Amends Minn. Stat. § 13.46, subd. 4

Effective August 1, 2005

Classifies as public data, the identity of a person disqualified for a license to provide family day care or foster care, if the person is substantiated as a perpetrator of maltreatment and the substantiated maltreatment is the reason for a licensing action. Also, adds to data that is public in connection with a human services licensure disqualification, the nature of a disqualification for which a variance was granted.

Use of Social Security Numbers

Chapter 163, Section 85

Amends Minn. Stat. § 325E.59

Effective July 1, 2007

A person or entity, not including a government entity, may not do any of the following:

1. Communicate or publicly display in any manner, an individual's Social Security number (SSN) to the general public;
2. Print an individual's SSN on any card required for the individual to access products or services provided by the entity;
3. Require the individual to transmit the individual's SSN over the Internet, unless the connection is secure or the SSN is encrypted;
4. Print a number that the entity knows is an individual's SSN on any material mailed to the individual, unless required by federal law.

Also, provides for continuation of prior use of SSN under certain conditions.

Public Benefits/Food Support/Child Care

Prepared by: Reggie Wagner, Staff Attorney

651-222-3749, ext. 107

rwagner@mnlsap.org

Exemption from Universal Participation for Certain Families in the Diversionary Work Program (DWP)

Chapter 98, Article 1, Section 14

Amends Minn. Stat. § 256J.561, subd. 3

Effective August 1, 2005

Allows families with children under the family cap provision to be eligible for the child under 12 weeks of age exception from universal participation.

Modifies Definition of “Family Unit” under the DWP

Chapter 98, Article 1, Section 17

Amends Minn. Stat. § 256J.95, subd. 2

Effective August 1, 2005

Modifies the definition of “family unit” under the DWP. Makes DWP family units subject to the same requirements as the Minnesota Family Investment Program (MFIP) family units. Defines “caregiver.”

Reinstatement Following Disqualification from the DWP

Chapter 98, Article 1, Section 20

Amends Minn. Stat. § 256J.95, subd. 18

Effective August 1, 2005

Clarifies MFIP and other Temporary Assistance to Needy Families (TANF) cash program eligibility of families who have been disqualified from the DWP due to noncompliance.

MFIP Funding - Base Allocation to Counties and Tribes

Chapter 159, Article 5, Section 7

Amends Minn. Stat. § 256J.626, subd. 6

Effective August 1, 2005

Adds definitions for “adjusted caseload factor” and “caseload difficulty factor.” Requires DHS to determine the initial allocation of MFIP consolidated funds to counties and tribes for calendar years 2006, 2007, and 2008, based on their share of the statewide 2002 historic spending base and on the proportion of their share of the “adjusted caseload factor”. The “adjusted caseload factor” includes a “caseload difficulty factor” derived from county and tribal performance on the self-support index established by DHS.

Definition of Professional Certification

Chapter 159, Article 5, Section 3

Amends Minn. Stat. § 256D.02, subd. 17

Effective August 1, 2005

Modifies the definition of “professional certification” within the general assistance program. Makes it consistent with the definition under the MFIP program.

Food Support Employment and Training Program Funding (FSET)

Chapter 159, Article 5, Section 4

Amends Minn. Stat. § 256D.051, subd. 6c

Effective August 1, 2005

Removes the June 30, 2005, sunset date for a provision allowing flexibility in the amount used per participant under the FSET program.

Child Care Eligibility

Chapter 159, Article 3, Section 1

Amends Minn. Stat. § 119B.025, subd. 1

Effective August 1, 2005

Allows counties to have families fill out a streamlined “change report form” rather than requiring a full redetermination if a family reports a change. Requires eligibility to be redetermined at least every six months. Changes terminology from “recertification” to “redetermination.” Requires DHS to develop a form to report changes.

Child Care County Allocation Formula

Chapter 159, Article 3, Section 2

Amends Minn. Stat. § 119B.03, subd. 6

Effective August 1, 2005

Expands the types of families who are included in the reallocation formula used to distribute Basic Sliding Fee child care funds among counties. The previous formula includes families who are on the waiting list but excludes families whose cases have been closed due to a reduction in the county allocation. The new formula includes families whose cases have been closed due to a reduction in the county allocation.

Licensed and Legal Nonlicensed Family Child Care Providers

Chapter 159, Article 3, Section 4

Amends Minn. Stat. § 119B.09, subd. 9

Effective August 1, 2005

Allows child care providers to be eligible for child care assistance for their own children during certain authorized activities. Currently, family child care providers are prohibited from receiving child care assistance subsidies for their own children or children in their custody.

Tax Law

Prepared by: Ron Elwood, Advocate
651-222-3749, ext. 109
relwood@mnlsap.org

Tax Fraud

Chapter 151, Article 6, Section 8
Amends Minn. Stat. § 289A.60, subd. 6
Effective for all tax returns filed after December 31, 2005.

Establishes an additional penalty for fraudulent filings for refunds or credits. A penalty of 50% of the claim for a refund or credit attributable to fraud is imposed. This penalty is in addition to the existing penalty of 50% of the tax owed, if any.

Tax Preparers

Chapter 151, Article 6, Section 10 and Article 9, Sections 2, 3, 9, 10, and 19
Amends Minn. Stat. § 270.30, subds. 1, 5, and 8
Amends Minn. Stat. § 289A.60, subd. 13
Adds Minn. Stat. § 270.301
Effective August 1, 2005

- A. Expansion of Scope of Applicability of Standards of Conduct. With certain exceptions, extends applicability of tax preparer standards to all tax preparers, including those who do not offer Refund Anticipation Loans. Eliminates the requirement that charges for electronic filing must be separately itemized. (*See note.*)
- B. Publication of Violators. Requires the Department of Revenue to publish (e.g., on the Internet) the business names and addresses of tax preparers who have been convicted of crimes under § 289A.63.
- C. E-filing Privileges. Authorizes the Department of Revenue to suspend e-filing privileges for any tax preparer found to have committed a pattern and practice of violations of § 289A.60, subd. 1 (understatement of liability) or § 289A.63 (criminal penalties for knowing failure to file, willful evasion, filing false returns).
- D. Addition of Actionable Violation. Permits the Department of Revenue to impose a civil penalty under § 289A.60 if the tax preparer is found to have understated tax liability due to a “reckless disregard of laws or rules.”

Note: This chapter also recodified Minnesota’s tax laws.

<u>Subject</u>	<u>Old Section</u>	<u>New Section</u>
Tax Preparer Standards and Refund Anticipation Loan Disclosures	270.30	270C.445.

Unemployment Insurance

Prepared by: Reggie Wagner, Staff Attorney
651-222-3749, ext. 107
rwagner@mnlisap.org

Unemployment Insurance

Chapter 112

Amends Minn. Stats. §§ 268.03, subd. 1; 268.035, subds. 9, 13, 14, 20, 21, and 26; 268.042, subd.1; 268.043; 268.044, subds.1, 2, and 3; 268.045, subd. 1; 268.051, subds. 1, 4, 6, and 7, by adding a subd. 268.052, subd.2; 268.053, subd.1; 268.057, subd.7; 268.065, subd.2; 268.069, subd.1; 268.07, subd.3b; 268.085, subds.1, 2, 3, 5, and 12; 268.086, subds.2 and 3; 268.095, subds.1, 4, 7, 8, 10, and 11; 268.101, subds.1, 2, and 3a; 268.103, subd.2; 268.105; 268.145, subd.1; 268.18, subds.1, 2, and 2b; 268.182, subd.2; 268.184, subds.1 and 2, by adding a subdivision; proposing coding for new law in Minnesota Statutes, Chapter 268; repealing Minnesota Statutes 2004, §§ 268.045, subds.2, 3, and 4; 268.086, subd.4; Laws 1997, Chapter 66, Section 64, subd.1; Minnesota Rules, parts 3310.2926; 3310.5000; 3315.0910, subpart 9; 3315.1020; 3315.1301; 3315.1315, subparts 1, 2, 3; 3315.1650; 3315.2210; 3315.3210; 3315.3220.

Effective July 1, 2005, except Section 34 which applies to unemployment law judge decisions issued on or after June 25, 2005.

Article 1 makes changes in the Minnesota unemployment insurance law for the purpose of curbing state unemployment tax act (“SUTA”) avoidance and affects employers.

Article 2 makes clarifying and substantive changes to Minnesota’s unemployment insurance law, including the elimination of the second level appeal of unemployment insurance cases and the creation of a new process – a “request for reconsideration.” This change applies to unemployment law judge decisions issued on or after June 25, 2005. Notable changes in Article 2 include:

Designation as “independent contractor”

Chapter 112, Article 2, Section 2

Amends Minn. Stat. § 268.035, subd. 9

Modifies conditions for designation as “independent contractor” to conform with the workers compensation law.

Clarification of definition of ‘employee’

Chapter 112, Article 2, Section 3

Amends Minn. Stat. § 268.035, subd. 13

Clarifies definition of “employee” so that it includes any individual employed to perform or help perform the work of an employer’s agent or employee if the employer had actual or constructive knowledge of the work.

Clarification of when a person is considered “unemployed”

Chapter 112, Article 2, Section 7

Amends Minn. Stat. § 268.035, subd. 26

Clarifies that a person is considered “unemployed” in a given week if (1) the person worked less than 32 hours in a week; and (2) the person’s weekly earnings are less than the person’s weekly benefits.

Modifications to eligibility requirements

Chapter 112, Article 2, Section 18 and 19

Amends Minn. Stat. § 268.085, subds. 2 and 3

Amends current law to provide that an applicant engaged in 32 hours or more of volunteer work is not eligible to receive benefits for that week. Specifies that vacation pay paid upon temporary, indefinite, or seasonal separation from employment makes an applicant ineligible for benefits, but vacation pay paid upon permanent separation from employment does not. Strikes existing language about determining weeks of payments that delay benefits and adds new language to clarify that § 19 applies to all weeks of payment, as defined, and to the period immediately following the last day of employment. Provides for calculation of number of weeks of payment.

Clarifications regarding applicants who quit employment

Chapter 112, Article 2, Section 24

Amends Minn. Stat. § 268.095, subd. 4

Clarifies that current law disqualifying applicants from unemployment benefits who quit employment (§ 268.095, subd. 1) must be analyzed in accord with current law dictating the duration of disqualification (§ 268.095, subd. 10).

Notification requirements

Chapter 112, Article 2, Section 30

Amends Minn. Stat. § 268.101, subd. 1

Amends the notification requirements to require an applicant to report (1) any offer of employment refused during the eight calendar weeks prior to the date of the applicant’s application for unemployment benefits, and (2) the name of the employer making the offer. Subjects persons who fail to disclose an offer of employment to the penalties for false disclosures and concealment of facts set forth in § 268.182, subd. 2.

Elimination of *de novo* review on appeal of unemployment insurance case

Chapter 112, Article 2, Section 34

Amends Minn. Stat. § 268.105

This Section applies to unemployment law judge decisions issued on or after June 25, 2005.

Eliminates provisions allowing applicants to seek *de novo* review of an unemployment law judge's decision before a senior unemployment law judge. Under current law, applicants and employers would still be able to appeal initial eligibility determinations before an unemployment law judge, and to seek judicial review of the unemployment law judge's decision before the Minnesota Court of Appeals. Also creates a new mechanism for review that would allow parties to file a motion for reconsideration of an unemployment law judge's decision with the unemployment law judge before they seek judicial review in the Minnesota courts, and provides information regarding notices, circumstances under which additional evidentiary testimony is accepted, and when explanations of credibility findings will be required. Also requires the Court of Appeals to use the Administrative Procedure Act standard of review.

Utilities

Prepared by: Ron Elwood, Advocate
651-222-3749, ext. 109
relwood@mnlisap.org

Closed-Caption and Accessible Information Services

Chapter 81

Amends Minn. Stat. § 237.52, subds. 2 and 4

Adds Minn. Stats. § § 248.061; 248.062; and 256C.30

Effective May 25, 2005 for services provided after April 15, 2005, and sunsets June 30, 2010.

Appropriates up to \$100,000 per year to the Department of Employment and Economic Development for grants to organizations for the provision of news and information in an accessible electronic or other technological format to blind persons and persons with disabilities. Appropriates up to \$300,000 per year to the Department of Human Services for grants to television stations for closed-captioning of local news programs.

Energy Legislation

Chapter 97

Amends Minn. Stats. § § 116C.53; and 216B.16 by adding subds. 7b and 7c

Adds Minn. Stat. § 216B.82

Effective May 26, 2005

Appropriates \$300,000 to the Department of Commerce to establish and complete by July 1, 2006 an e-filing system that allows documents filed with the Public Utilities Commission to be filed and retrieved via the Internet.

Wireless Directories

Chapter 163, Section 84

Adds Minn. Stats. § § 325E.317-318

Effective June 4, 2005

Prohibits providers of wireless telecommunications service (or their affiliates or agents) from including phone numbers of customers in a wireless phone directory -- or publishing, selling, or disseminating information from a directory -- without the customer's prior express authorization. Consent must be unambiguous and affirmatively obtained separate from the signing or extension of a contract for service. Consent given may be revoked at any time. No fees may be charged to withhold information from publication or dissemination. The Attorney General has enforcement authority and consumers may obtain monetary damages for violation.

Miscellaneous Provisions

Prepared by: Reggie Wagner, Staff Attorney
651-222-3749, ext. 107 or rwagner@mnlsap.org
Kathleen McDonough, Staff Attorney
651-222-3749 ext. 102 or kmcdon@mnlsap.org
Ron Elwood, Advocate
651-222-3749, ext. 109 or relwood@mnlsap.org

Foreclosure Assistance Notice

Chapter 199, Sections 6 and 7

Amends Minn. Stat. § 580.041 by adding subds. 6 and 7

Effective August 1, 2005

- A. Affidavit of Compliance. Provides that a foreclosing party that must send notice of foreclosure assistance under this section may comply by filing an affidavit with the county recorder or registrar of titles stipulating that the property to be foreclosed does not fall within the criteria for each notice is required. *Amends Minn. Stat. § 580.041 by adding subd. 6.*
- B. Effect of Noncompliance. Provides that a foreclosure may not be invalidated for failure to file the notice, where required, unless an action to invalidate the sale is commenced and a notice of lis pendens is filed with the county recorder or registrar of titles within one year after the last of the mortgagor's redemption period. Actions not pending on August 1, 2005 or commenced after February 1, 2006, unless a notice of lis pendens has not been filed, are not affected. *Amends Minn. Stat. § 580.041 by adding subd. 7.*

Minimum Wage Increase

Chapter 44

Amends Minn. Stat. § 177.24, subd. 1

Effective Date: August 1, 2005

Beginning August 1, 2005, the bill increases the minimum wage rate as follows:

- For large employers, from a rate of \$5.15 an hour to a rate of \$6.15 an hour.
- For small employers, from a rate of \$4.90 an hour to \$5.25 an hour.
- For the training wage (employees under 20 years old during the first 90 consecutive days of employment), from \$4.25 an hour to \$4.90 an hour.

The bill modifies the definition of "large employer" to include enterprises with annual gross sales of at least \$625,000 and the definition of "small employer" to include enterprises with annual gross sales of less than \$625,000. (Under current law, an enterprise is a large employer if it has annual gross sales of at least \$500,000 and is a small employer if it has annual gross sales of less than \$500,000.)

Increased Penalties for Employers Who Fail to Pay Wages to Employees Who are Migrant Workers or Who Have to Live Away from Home for the Purpose of Transitory Employment after Employment is Terminated

Chapter 127

Amends Minn. Stats. § § 181.11, subd. 1; 181.74, subd. 1 and 181.89, subd. 2

Effective August 1, 2005

Current law requires that, upon termination of employment that required an employee to live away from home, an employer must pay the employee any wages due within 24 hours of termination. If the wages are not paid within 24 hours, the employer is liable for the employee's reasonable expenses of remaining away from home. If the employer did not pay these wages within three days of termination, the employer was also required to pay the employee the employee's average daily wage from the time of termination until the time payment was made in full (but no longer than 15 days). Now, if wages are not paid within *two* business days, an employer is liable for *two times* the employee's average daily wage from termination until payment is made in full, regardless of how long it takes. Makes employer's failure to pay wages within *30 days* a criminal misdemeanor. Increases from \$250 to \$500 the penalty for the following violations of migrant labor laws: employers who fail to comply with the terms of an employment statement provided to a migrant worker; employers who fail to comply with any statutory requirements for the payment of migrant workers; and employers who fail to pay wages to a migrant worker within the time period required by law (e.g., paychecks every two weeks, payment within three days after termination).

Seasonal Farm Worker Housing

Chapter 79

Amends Minn. Stat. § 327.23 by adding subd. 2a

Effective May 26, 2005

Exempts two or fewer manufactured homes on a permanent farm operation from regulation as a manufactured home park, provided that the homes: are located within 100 yards of an existing residence; are used exclusively to house either agricultural labor or family of the owner, at least one member of which is working the farm; conform to the Minnesota Manufactured Housing Code; and meet state regulations for health, sanitation, and building safety.

Trust Law Changes

Chapter 26, Sections 1, 2 & 6

Amends Minn. Stats. § § 501B.17; 501B.175, subds.2 and 3; and 524.2-302

Effective August 1, 2005

Clarifies proper venue for filing of petition is the county where a trustee has an office or the county in which the trust is administered. Amends statute to provide that if, after a will is written, a child is later born who also has children, but the omitted child dies before the testator leaving living descendants, the descendants of the omitted child take the omitted child's share. Also, amends statute to conform to changes made to the Internal Revenue Code provisions.