

2014 Legislative Update

The 2014 session of the 88th Minnesota legislature provided significant changes and additions to many statutes. These legislative changes will have a significant impact on health, employment, general insurance defense, and government entities. Of significant note, the legislature provided for the legalization of medical marijuana by authorizing the creation of the medical cannabis registry program. Additionally, significant amendments updated the insurance industry related statutes; and government entities will be interested in two bills that were passed regarding the Data Practice Act and annexation reform.

Medical Marijuana and its Impact on Employers - The legislature passed S.F. No. 2470, which became effective on May 30, 2014. The bill amended Minn. Stat. § 13.3806 to include subdivision 22, which authorizes the creation of the medical cannabis registry program. This program will have major implications for employers regarding their drug and alcohol testing policies, but it has yet to see its first major challenge via the court system.

The statute provides that an employer is not allowed to discriminate against a person who is legally registered with the medical cannabis program, in hiring, termination, or any term or condition of employment resulting from the employee's positive drug test for cannabis components or metabolites. This prohibition is excepted if a registered patient used, possessed, or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. Employees required to undergo drug testing may present verification of enrollment in the patient registry as part of the employee's explanation of cannabis use and exemption from the employer's drug policies.

This law has yet to be challenged by employers attempting to refute the applicability of the law to their employment policies. While this law does not provide an exception to federal job requirements, it has yet to be determined what kind of effect the law will have on jobs not subject to enhanced scrutiny and restrictions.

Insurance Fraud Reduction, Immunity, and General Updates - The legislature also passed H.F. 3073, which became effective on May 21, 2014. It amends Minn. Stat. § 72A.502, subd. 2, to reduce liability in fraudulent actions. Previously, the statute directed that a person may disclose privileged information, without written authorization of another person that is

reasonably necessary to detect or prevent criminal activity, fraud, etc. The amended version added the following: *Any insurer, insurance agent, or insurance-support organization making such a disclosure is immune from liability under Minn. Stat. § 60A.952, subd. 3.*

The addition of this language was heavily debated by the House Judiciary Finance and Policy Committee as it was referred to as a whistleblower law. Ultimately, the language was approved despite testimony against it on behalf of the Insurance Federation of Minnesota.

The bill made additional changes to update the language of Minn. Stat. § 65B.44, subd. 4, which pertains to benefits paid for funeral expenses arising out of motor vehicle accidents. The statute has been amended to provide \$5,000, up from \$2,000, to the deceased's estate. As per discussion within the Judiciary Finance and Policy Committee, this amendment was made to bring Minnesota's statutory language in line with like statutes of other states.

Data Practices Act Applies to Private Government Contractors - In *Helmsberger v. Johnson Controls, Inc.*, 839 N.W.2d 527 (Minn. 2013), a St. Louis County publisher sought access to a contract between a private government contractor and its subcontractor under the Minnesota Government Data Practices Act. The Minnesota Supreme Court held that because the governmental entity, a school district, did not include language in its contract that as a government contractor Johnson Controls would be subject to the Data Practices Act, which the school district should have done under Minn. Stat. § 13.05, subd. 11, Johnson Controls was not subject to that Act.

Firm News

Jardine, Logan & O'Brien welcomes new associate **Hannah Okins**. Hannah received her J.D. from William Mitchell College of Law in 2013. Prior to joining JLO, she worked in the Litigation Department of the League of Minnesota Cities Insurance Trust.

The Firm and is pleased to announce that partner **Jason Koch** has been admitted in Wisconsin, and partner **Elisa Hatlevig** has been admitted in North Dakota.

Updated Pasta Salad

Cranberry Poppy Seed Chicken Pasta Salad

There's nothing like a standard chicken salad recipe...unless you update it and make it another standard.

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<http://allrecipes.com/recipe/poppy-seed-chicken-pasta-salad/?scale=6&ismetric=0>

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Likely in response to *Helmsberger*, the Minnesota legislature passed S.F. No. 1770. The bill amended Minn. Stat. § 13.05, subd. 11, to include the following language: “All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision.” The bill further clarified that Minn. Stat. § 13.05, subd. 11, applies to health plan companies, managed care organizations and other parties contracting with a government entity for health-care related services.

These changes to the Government Data Practices Act burden government contractors more than they do governmental entities. Under the prior language of the statute, governmental entities had a duty to include contractual language in agreements with contractors that made it clear that those contractors were subject to the Government Data Practices Act. The amended language of the statute now explicitly provides that contractors are subject to the Act regardless of whether their contracts with governmental entities state as much. The amended statute, however, still imposes a duty on governmental entities to include in their contracts a notice that the private contractors are subject to the Act while carrying out their functions under the contracts.

Legislature Reforms Municipal Annexation Laws - The legislature passed H.F.No. 1425, which became effective on May 8, 2014. The bill amended Minn. Stat § 414.011, subd. 5, to clarify that a “property owner” means the owner of any fee interest in land. The bill also added a subdivision to the statute to define “property description” as the legal description of the property.

Most notably, the bill amended Minn. Stat. § 414.033, subd. 2(3) to provide that the statute may not be used to annex property adjacent to property that was either simultaneously proposed to be annexed, or had been annexed within the

preceding 12 months, if the property had been owned by the same owners at any point in that 12-month period. This restriction only applies, however, if the area to be annexed cumulatively exceeds 120-acres. The clarification provided by the passage of this bill will aid municipalities by lessening the potential legal hurdles they face when they consider annexing land.

Workers’ Compensation - The Minnesota Supreme Court has reversed a decision of the Minnesota Workers' Compensation Court of Appeals concerning intervenor rights. In *Gamble v. Twin Cities Concrete Products, et al.*, the court narrowed its 1979 holding in *Brooks v. A.M.F., Inc.*, 278 N.W.2d 310 (Minn. 1979) and held that when an employer fails to give a medical provider notice of its rights to intervene in a workers' compensation proceeding, the medical provider is not entitled to automatic payment of its unpaid medical charges unless it can show that the lack of notice resulted in prejudice. The court noted that two Minnesota Rules that have been promulgated since the *Brooks* decision, Minn. Rule 1420.1850 and Minn. Rule 1420.1100, protect the rights of a medical provider, and that the intervenor in this case had not been materially prejudiced.

The Minnesota Supreme Court has clarified that the only retirement benefit that may be offset against an employee’s permanent total disability benefits under the “old age and survivor insurance benefits” provision of Minn. Stat. § 176.101, subd. 4 is federal social security benefits. Under this holding, retirement benefits paid under other programs, including PERA, cannot be offset. The court in *Ekdahl* did not address disability benefits paid under any government disability benefit program, which can be offset pursuant to Minn. Stat. § 176.101, subd. 4. *Ekdahl v. ISD 213*, A14-0089 (Minn. Aug. 13, 2014).

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About the Authors

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