A bill for an act

relating to employment; providing for workers' compensation benefits for domestic partners; including domestic partners of military members in employee leave requirements; providing for payment of wages due a deceased employee to a surviving domestic partner; amending Minnesota Statutes 2008, sections 176.011, subdivision 11a, by adding a subdivision; 176.031; 176.041, subdivision 1a; 176.051, subdivision 1; 176.102, subdivision 1a; 176.111, subdivisions 1, 6, 7, 8, 9a, 10, 14, 15, 21; 176.191, subdivision 4; 181.58; 181.947, subdivision 1; 181.948, subdivision 1; Minnesota Statutes 2009 Supplement, section 176.041, subdivision 1.

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

Section 1. Minnesota Statutes 2008, section 176.011, is amended by adding a subdivision to read:

Subd. 8b. **Domestic partners.** "Domestic partners" means two persons who:

(1) are the same sex;

(2) are adults and mentally competent to enter into legally binding contracts;

(3) have assumed responsibility for each other's basic common welfare, financial obligations, and well-being;

(4) share a common domicile and primary residence with each other on a permanent basis;

(5) have a committed interdependent relationship with each other, intend to continue that relationship indefinitely, and do not have this type of relationship with any other person;

(6) are not married to another person and have not entered into a domestic partnership arrangement with another person that is currently in effect; and

(7) are not related by blood or adoption so that a marriage between them would be prohibited under section 517.03, subdivision 1, paragraph (a), clause (2) or (3).

Sec. 2. Minnesota Statutes 2008, section 176.011, subdivision 11a, is amended to read:

Subd. 11a. **Family farm.** (a) "Family farm" means any farm operation which pays or is obligated to pay cash wages, exclusive of machine hire, to farm laborers for services rendered during the preceding calendar year in an amount:

(1) less than $8,000; or

(2) less than the statewide average annual wage as described in subdivision 20 when the farm operation has total liability and medical payment coverage equal to $300,000 and $5,000, respectively, under a farm liability insurance policy, and the policy covers injuries to farm laborers.

(b) For purposes of this subdivision, farm laborer does not include any spouse or domestic partner, parent or child, regardless of age, of a farmer employed by the farmer, or any executive officer of a family farm corporation as defined in section 500.24, subdivision 2, or any spouse or domestic partner, parent or child, regardless of age, of such an officer employed by that family farm corporation, or other farmers in the same community or members of their families exchanging work with the employer. Notwithstanding any law to the contrary, a farm laborer shall not be considered as an independent contractor for the purposes of this chapter; provided that a commercial baler or commercial thresher shall be considered an independent contractor.

Sec. 3. Minnesota Statutes 2008, section 176.031, is amended to read:

176.031 EMPLOYER'S LIABILITY EXCLUSIVE.

The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, personal representative, surviving spouse or domestic partner, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death. If an employer other than the state or any municipal subdivision thereof fails to insure or self-insure liability for compensation to injured employees and their dependents, an injured employee, or legal representatives or, if death results from the injury, any dependent may elect to claim compensation under this chapter or to maintain an action in the courts for damages on account of such injury or death. In such action it is not necessary to plead or prove freedom from contributory negligence. The defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of employment, or that the injury was due to the contributory negligence of the employee, unless it appears that such negligence was willful on the part of the employee. The burden of proof to establish such willful negligence is upon the defendant. For the purposes of this chapter the state

and each municipal subdivision thereof is treated as a self-insurer when not carrying insurance at the time of the injury or death of an employee.

Sec. 4. Minnesota Statutes 2009 Supplement, section 176.041, subdivision 1, is amended to read:

Subdivision 1. **Employments excluded.** This chapter does not apply to any of the following:

(1) a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law;

(2) a person employed by a family farm as defined by section 176.011, subdivision 11a;

(3) the spouse or domestic partner, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer;

(4) a sole proprietor, or the spouse or domestic partner, parent, and child, regardless of age, of a sole proprietor;

(5) a partner engaged in a farm operation or a partner engaged in a business and the spouse or domestic partner, parent, and child, regardless of age, of a partner in the farm operation or business;

(6) an executive officer of a family farm corporation;

(7) an executive officer of a closely held corporation having less than 22,880 hours of payroll in the preceding calendar year, if that executive officer owns at least 25 percent of the stock of the corporation;

(8) a spouse or domestic partner, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, and employed by that family farm corporation;

(9) a spouse or domestic partner, parent, or child, regardless of age, of an executive officer of a closely held corporation who is referred to in clause (7);

(10) another farmer or a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community;

(11) a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer;

(12) persons who are independent contractors as defined by sections 176.043 and 181.723, and any rules adopted by the commissioner pursuant to section 176.83 except that these exclusions do not apply to an employee of an independent contractor;

(13) an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member;

(14) a person employed as a household worker in, for, or about a private home or household who earns less than $1,000 in cash in a three-month period from a single private home or household provided that a household worker who has earned $1,000 or more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned $1,000 in the present quarter;

(15) persons employed by a closely held corporation who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to an officer of the corporation, who is referred to in clause (7), if the corporation files a written election with the commissioner to exclude such individuals. A written election is not required for a person who is otherwise excluded from this chapter by this section;

(16) a nonprofit association which does not pay more than $1,000 in salary or wages in a year;

(17) persons covered under the Domestic Volunteer Service Act of 1973, as amended, United States Code, title 42, sections 5011, et seq.;

(18) a manager of a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year, if that manager owns at least a 25 percent membership interest in the limited liability company;

(19) a spouse or domestic partner, parent, or child, regardless of age, of a manager of a limited liability company described in clause (18);

(20) persons employed by a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to a manager of a limited liability company described in clause (18), if the company files a written election with the commissioner to exclude these persons. A written election is not required for a person who is otherwise excluded from this chapter by this section; or

(21) members of limited liability companies who satisfy the requirements of clause (12).

Sec. 5. Minnesota Statutes 2008, section 176.041, subdivision 1a, is amended to read:

Subd. 1a. **Election of coverage.** The persons, partnerships, limited liability companies, and corporations described in this subdivision may elect to provide the insurance coverage required by this chapter.

(a) An owner or owners of a business or farm may elect coverage for themselves.

(b) A partnership owning a business or farm may elect coverage for any partner.

(c) A family farm corporation as defined in section 500.24, subdivision 2, clause (c), may elect coverage for any executive officer.

(d) A closely held corporation which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any executive officer if that executive officer is also an owner of at least 25 percent of the stock of the corporation.

(e) A limited liability company which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any manager if that manager is also an owner of at least 25 percent membership interest in the limited liability company.

(f) A person, partnership, limited liability company, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor. A person, partnership, limited liability company, or corporation may charge the independent contractor a fee for providing the coverage only if the independent contractor (1) elects in writing to be covered, (2) is issued an endorsement setting forth the terms of the coverage, the name of the independent contractors, and the fee and how it is calculated.

(g) The persons, partnerships, limited liability companies, and corporations described in this subdivision may also elect coverage for an employee who is a spouse or domestic partner, parent, or child, regardless of age, of an owner, partner, manager, or executive officer, who is eligible for coverage under this subdivision. Coverage may be elected for a spouse or domestic partner, parent, or child whether or not coverage is elected for the related owner, partner, manager, or executive director and whether or not the person, partnership, limited liability company, or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this subdivision shall be included within the meaning of the term employee for the purposes of this chapter.

(h) Notice of election of coverage or of termination of election under this subdivision shall be provided in writing to the insurer. Coverage or termination of coverage is effective the day following receipt of notice by the insurer or at a subsequent date if so indicated in the notice. The insurance policy shall be endorsed to indicate the names of those persons for whom coverage has been elected or terminated under this subdivision. An election of coverage under this subdivision shall continue in effect as long as a policy or renewal policy of the same insurer is in effect.

(i) Nothing in this subdivision shall be construed to limit the responsibilities of owners, partnerships, limited liability companies, or corporations to provide coverage for their employees, if any, as required under this chapter.

Sec. 6. Minnesota Statutes 2008, section 176.051, subdivision 1, is amended to read:

Subdivision 1. **Farm and household workers.** An employer of workers on a farm operation or household workers not otherwise covered by this chapter may assume the liability for compensation imposed by this chapter and the employer's procurement of a workers' compensation policy constitutes an assumption by the employer of liability unless the employer elects in writing not to have those persons covered and the policy states that election. This assumption of liability takes effect and continues from the effective date of the policy and only as long as the policy remains in force. If during the life of the insurance policy, an employee, who is a worker on a farm operation or a household worker, suffers personal injury or death arising out of and in the course of employment, the exclusive remedy of the employee or the employee's dependents is under this chapter. For purposes of this section, farm worker does not include a spouse or domestic partner, parent, or child, regardless of age, of a farmer, a partner in a farm operation, or an officer of a family farm corporation as defined in section 500.24, subdivision 1, nor does it include other farmers in the same community or members of their family exchanging work with the farmer-employer or family farm corporation operator.

Sec. 7. Minnesota Statutes 2008, section 176.102, subdivision 1a, is amended to read:

Subd. 1a. **Surviving spouse or domestic partner.** Upon the request of a qualified dependent surviving spouse or domestic partner, rehabilitation services shall be provided through the rehabilitation services section of the Workers' Compensation Division. For the purposes of this subdivision a qualified dependent surviving spouse or domestic partner is a dependent surviving spouse or domestic partner, as determined under section 176.111, who is in need of rehabilitation assistance to become self-supporting. A spouse or domestic partner who is provided rehabilitation services under this subdivision is not entitled to compensation under subdivision 11.

Sec. 8. Minnesota Statutes 2008, section 176.111, subdivision 1, is amended to read:

Subdivision 1. **Persons wholly dependent, presumption.** For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent:

(a) spouse or domestic partner, unless it be shown that the spouse or domestic partner and decedent were voluntarily living apart at the time of the injury or death;

(b) children under 18 years of age, or a child under the age of 25 years who is regularly attending as a full time student at a high school, college, or university, or regularly attending as a full time student in a course of vocational or technical training.

Sec. 9. Minnesota Statutes 2008, section 176.111, subdivision 6, is amended to read:

Subd. 6. **Spouse or domestic partner, no dependent child.** If the deceased employee leaves a dependent surviving spouse or domestic partner and no dependent child, there shall be paid to the spouse or domestic partner weekly workers' compensation benefits at 50 percent of the weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.

Sec. 10. Minnesota Statutes 2008, section 176.111, subdivision 7, is amended to read:

Subd. 7. **Spouse or domestic partner, one dependent child.** If the deceased employee leaves a surviving spouse or domestic partner and one dependent child, there shall be paid to the surviving spouse or domestic partner for the benefit of the spouse or domestic partner and child 60 percent of the daily wage at the time of the injury of the deceased until the child is no longer a dependent as defined in subdivision 1. At that time there shall be paid to the dependent surviving spouse or domestic partner weekly benefits at a rate which is 16-2/3 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, including adjustments as provided in section 176.645.

Sec. 11. Minnesota Statutes 2008, section 176.111, subdivision 8, is amended to read:

Subd. 8. **Spouse or domestic partner, two dependent children.** If the deceased employee leaves a surviving spouse or domestic partner and two dependent children, there shall be paid to the surviving spouse or domestic partner for the benefit of the spouse or domestic partner and children 66-2/3 percent of the daily wage at the time of the injury of the deceased until the last dependent child is no longer dependent. At that time the dependent surviving spouse or domestic partner shall be paid weekly benefits at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, adjusted according to section 176.645.

Sec. 12. Minnesota Statutes 2008, section 176.111, subdivision 9a, is amended to read:

Subd. 9a. ~~**Remarriage of spouse**~~ **Subsequent marriage or domestic partnership.** A surviving spouse or domestic partner who remarries or enters into a new domestic

partnership and is receiving benefits under subdivision 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse or domestic partner is entitled to receive benefits pursuant to this section.

Sec. 13. Minnesota Statutes 2008, section 176.111, subdivision 10, is amended to read:

Subd. 10. **Allocation of compensation.** In all cases where compensation is payable to the surviving spouse or domestic partner for the benefit of the surviving spouse or domestic partner and dependent children, the commissioner, compensation judge, or Workers' Compensation Court of Appeals or district court in cases upon appeal shall determine what portion of the compensation applies for the benefit of dependent children and may order that portion paid to a guardian. This subdivision shall not be construed to increase the combined total of weekly government survivor benefits and workers' compensation beyond the limitation established in subdivision 21.

Sec. 14. Minnesota Statutes 2008, section 176.111, subdivision 14, is amended to read:

Subd. 14. **Parents.** If the deceased employee leave no surviving spouse or domestic partner or child entitled to any payment under this chapter, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly 45 percent of the weekly wage at the time of the injury of the deceased. In case of the death of either of the wholly dependent parents the survivor shall receive 35 percent of the weekly wage thereafter. If the deceased employee leave one parent wholly dependent on the deceased, there shall be paid to such parent 35 percent of the weekly wage at the time of the injury of the deceased employee. The compensation payments under this section shall not exceed the actual contributions made by the deceased employee to the support of the employee's parents for a reasonable time immediately prior to the injury which caused the death of the deceased employee.

Sec. 15. Minnesota Statutes 2008, section 176.111, subdivision 15, is amended to read:

Subd. 15. **Remote dependents.** If the deceased employee leaves no surviving spouse or domestic partner or child or parent entitled to any payment under this chapter, but leaves a grandparent, grandchild, brother, sister, mother-in-law, or father-in-law wholly dependent on the employee for support, there shall be paid to such dependent, if but one, 30 percent of the weekly wage at the time of injury of the deceased, or if more than one, 35 percent of the weekly wage at the time of the injury of the deceased, divided among them share and share alike.

Sec. 16. Minnesota Statutes 2008, section 176.111, subdivision 21, is amended to read:

Subd. 21. **Death, benefits; coordination with governmental survivor benefits.** The following provision shall apply to any dependent entitled to receive weekly compensation benefits under this section as the result of the death of an employee, and who is also receiving or entitled to receive benefits under any government survivor program:

The combined total of weekly government survivor benefits and workers' compensation death benefits provided under this section shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing death; provided, however, that no state workers' compensation death benefit shall be paid for any week in which the survivor benefits paid under the federal program, by themselves, exceed 100 percent of such weekly wage provided, however, the workers' compensation benefits payable to a dependent surviving spouse or domestic partner shall not be reduced on account of any governmental survivor benefits payable to decedent's children if the support of the children is not the responsibility of the dependent surviving spouse or domestic partner.

For the purposes of this subdivision "dependent" means dependent surviving spouse or domestic partner together with all dependent children and any other dependents. For the purposes of this subdivision, mother's or father's insurance benefits received pursuant to United States Code, title 42, section 402(g), are benefits under a government survivor program.

Sec. 17. Minnesota Statutes 2008, section 176.191, subdivision 4, is amended to read:

Subd. 4. **Program payments.** If the employee's medical expenses for a personal injury are paid pursuant to any program administered by the commissioner of human services, or if the employee or spouse or domestic partner or dependents living with the employee receive subsistence or other payments pursuant to such a program, and it is subsequently determined that the injury is compensable pursuant to this chapter, the workers' compensation insurer shall reimburse the commissioner of human services for the payments made, including interest at a rate of 12 percent a year.

Amounts paid to an injured employee or spouse or domestic partner or dependents living with the employee pursuant to such a program and attributable to the personal injury shall be deducted from any settlement or award of compensation or benefits under this chapter, including, but not limited to, temporary and permanent disability benefits.

The insurer shall attempt, with due diligence, to ascertain whether payments have been made to an injured employee pursuant to such a program prior to any settlement or issuance of a binding award and shall notify the Department of Human Services, Benefit

Recovery Section, when such payments have been made. An employee who has received public assistance payments shall notify the Department of Human Services, Benefit Recovery Section, of its potential intervention claim prior to making or settling a claim for benefits under this chapter. Notice served on local human services agencies is not sufficient to meet the notification requirement in this subdivision.

Sec. 18. Minnesota Statutes 2008, section 181.58, is amended to read:

181.58 SURVIVING SPOUSE OR DOMESTIC PARTNER PAID WAGES DUE.

For the purposes of this section the word "employer" includes every person, firm, partnership, corporation, the state of Minnesota, all political subdivisions, and all municipal corporations. "Domestic partners" has the meaning given in section 176.011, subdivision 8b.

If, at the time of the death of any person, an employer is indebted to the person for work, labor, or services performed, and no personal representative of the person's estate has been appointed, such employer shall, upon the request of the surviving spouse or domestic partner, forthwith pay this indebtedness, in such an amount as may be due, not exceeding the sum of $10,000, to the surviving spouse or domestic partner. The employer may in the same manner provide for payment to the surviving spouse or domestic partner of accumulated credits under the vacation or overtime plan or system maintained by the employer. The employer shall require proof of claimant's relationship to decedent by affidavit, and require claimant to acknowledge receipt of such payment in writing. Any payments made by the employer pursuant to the provisions of this section shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable therefor to the decedent's estate or the decedent's personal representative thereafter appointed. Any amounts so received by a spouse or domestic partner shall be considered in diminution of the allowance to the spouse or domestic partner under section 524.2-403.

Sec. 19. Minnesota Statutes 2008, section 181.947, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Active service" has the meaning given in section 190.05, subdivision 5.

(c) "Domestic partners" has the meaning given in section 176.011, subdivision 8b.

~~(c)~~ (d) "Employee" means a person, independent contractor, or person working for an independent contractor who performs services for compensation, in whatever form, for an employer.

~~(d)~~ (e) "Employer" means a person or entity located or doing business in this state and having one or more employees, and includes the state and all political or other governmental subdivisions of the state.

~~(e)~~ (f) "Immediate family member" means a person's parent, child, grandparents, siblings, or spouse or domestic partner.

Sec. 20. Minnesota Statutes 2008, section 181.948, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given in this subdivision.

(b) "Active service" has the meaning given in section 190.05, subdivision 5.

(c) "Domestic partner" has the meaning given in section 176.011, subdivision 8b.

~~(c)~~ (d) "Employee" means a person who performs services for compensation, in whatever form, for an employer. Employee does not include an independent contractor.

~~(d)~~ (e) "Employer" means a person or entity located or doing business in this state and having one or more employees, and includes the state and all political or other governmental subdivisions of the state.

~~(e)~~ (f) "Immediate family member" means a person's grandparent, parent, legal guardian, sibling, child, grandchild, spouse or domestic partner, fiance, or fiancee.