REPORT

OF

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REVISOR OF STATUTES

****

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

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SUBMITTED TO THE LEGISLATURE OF THE STATE OF MINNESOTA

NOVEMBER 1984

MINNESOTA LEGISLATURE

OFFICE OF THE REVISOR OF STATUTES

STATE CAPITOL, ROOM 3
ST. PAUL, MINNESOTA 55155

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November 15, 1984

The Honorable Jerome M. Hughes
President of the Senate

and

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

State Capitol
St. Paul, MN 55155

Gentlemen:

Minnesota Statutes, section 3C.04, subdivision 3, requires the Revisor of Statutes to biennially report to the Legislature on statutory changes recommended or statutory deficiencies noted in opinions of the Supreme Court of Minnesota.

I am, therefore, pleased to transmit to you our report on opinions issued by the Supreme Court between September 30, 1982 and September 30, 1984.

Respectfully submitted,

Steven C. Cross
Revisor of Statutes

SCC:lhs
CC: Chairman and Members,
Senate Judiciary Committee

Chairman and Members,
House Judiciary Committee

REPORT OF THE REVISOR OF STATUTES

TO THE

LEGISLATURE OF THE STATE OF MINNESOTA

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

The Revisor of Statutes respectfully reports to the Legislature of the State of Minnesota, in accordance with Minnesota Statutes, section 3C.04, subdivision 3, which provides that the Revisor of Statutes shall:

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

The opinions of the Supreme Court of Minnesota concerning statutory changes recommended or discussed, or statutory deficiencies noted during the period beginning September 30, 1982, and ending September 30, 1984, together with a statement of the cases and the comment of the court, are set forth on the following pages, in alphabetical order.

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

can be foreseen as causing substantial controversy, no remedy is suggested.

TABLE OF CASES

Section 422A.156

CHRISTENSEN v. MPLS. MUN. EMP. RETIRE. BD.

Christensen v. Minneapolis Municipal Employees Retirement Board, 331 N.W.2d 740 (March 18, 1983) was a declaratory and injunctive relief action contesting the validity of section 422A.156, which was enacted in 1980 and provides:

> From and after February 8, 1980, nothing contained in section 422A.09, subdivision 3, clause (2) shall be construed as allowing payment of a retirement allowance or other retirement benefits other than a disability allowance pursuant to section 422A.18 if otherwise eligible to any former, present or future elective officer of the city of Minneapolis who has not attained the age of at least 60 years unless the elective officer has received credit for at least 30 years of services and retires pursuant to section 422A.15, subdivision 1. (Emphasis added)

Plaintiff-appellant had retired January 2, 1974 at the age of 38 on a monthly pension which commenced upon retirement. The pension was based upon some 22 years of service, with the last eight and one-half years served as an elected city council member. At the time of his retirement the law specified no minimum age for commencement of benefits payable to elected officials. (Nonelected members of the fund were required to be at least 60.)

The 1978 Legislature amended section 422A.09, subdivision 3(2) to make elected city officials subject to the same minimum age requirement (age 60) as nonelected employees. The legislation was effective March 24, 1978 and applied prospectively only to elected officials first holding office after the effective date. Laws 1978, c. 562, s. 11, 35.

By including "former, present or future" elected officers

within the scope of the 1980 legislation, the Legislature apparently intended to cut off the benefits of Christensen and eight other retirees similarly situated until they attained the age of 60 years. The District Court upheld the action of the Legislature, but the Supreme Court reversed, holding that:

> The state's interest here in altering the pension eligibility requirements by imposing a minimum age requirement is insufficient to justify the impairment of the contractual obligation owed a public employee who has already retired and is receiving his pension; Minn. Stat. § 422A.156 (1982) is, therefore, invalid as an unconstitutional impairment of contractual obligations to the extent that it purports to apply to elected city officials, such as appellant, already retired at the time of its enactment.

The Supreme Court declined to rule on the application of section 422A.156 to elected city officials in office on its effective date, but this application might also raise serious constitutional objections. The Court stated that the State's interest might be served by applying section 422A.156 to future elected officials only. The 1978 provision cited above imposed a minimum age of 60, and so makes section 422A.156 needless.

Hence a repeal of section 422A.156 would appear to be in order.

Section 176.011, Subdivision 16

EGELAND v. CITY OF MINNEAPOLIS

Egeland v. City of Minneapolis, 344 N.W.2d 597 (February 3, 1984) was an appeal by a retired Minneapolis police officer from a Workers' Compensation Court of Appeals decision that awarded disability benefits for physical injury in the form of a duodenal ulcer but denied additional compensation for work-related depression.

The Supreme Court upheld the appeals court decision as correct in holding that compensation for stress-induced depression is precluded under the Court's earlier decision in Lockwood v. Independent School District No. 877, 312 N.W.2d 924. This case was reported in the Report of the Revisor of Statutes, November 1982.

The Court referred to three classifications of emotional, nervous, psychoneurotic or psychotic disorders:

1. mental trauma resulting in physical injury (which the ulcer apparently was);

2. physical trauma resulting in mental injury; and

3. mental trauma resulting in mental injury (claimant's depression).

The first two categories have been held compensable in Minnesota, while the third has not. The Court concluded its opinion stating:

> In Lockwood, this court refused to permit compensation for work-related stress-induced mental disability in the absence of a clear legislative intent to extend coverage to such disability.

The policy determination as to whether workers' compensation coverage should be extended to employees who are mentally disabled by employment-related stress is best left to the legislature.

As stated in the 1982 Revisor's Report:

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

Because of the existing controversy over costs of workers' compensation and the potential for cost increases resulting from coverage of mental injury or disability, no recommendation is made.

Section 3.736, Subdivision 3(h)

GREEN-GLO TURF FARMS v. STATE

Green-Glo Turf Farms v. State, 347 N.W.2d 491 (April 27, 1984) was an action against the state for damages caused to growing crops as a result of flooding allegedly caused by the State's negligent construction, maintenance and operation of pools in a wildlife area. The case, in which a summary judgment of the District Court was upheld in a five-to-four decision, presents an interesting construction of section 3.736, subdivision 3(h) which provides:

> Without intent to preclude the courts from finding additional cases where the state and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses: * * *
>
> (h) Any loss arising from the construction, operation, or maintenance of the outdoor recreation system, as defined in section 86A.04, or from the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, except that the state is liable for conduct that would entitle a trespasser to damages against a private person. * * *

Appellant's property is located near the Carlos Avery Wildlife Management Area, a part of the outdoor recreation system. Due to some five and one-half inches of rain in a three-day period, the state manipulated water control structures within Carlos Avery to prevent the washing out of dikes. The dikes were apparently saved, but the water release flooded appellant's lands, destroying crops and precipitating the lawsuit.

The majority opinion upheld the granting of summary

judgment, holding that:

> Minnesota Statutes § 3.736, subd. 3(h) (1982) constitutionally immunizes the state from tort liability for damages to property caused by the operation of outdoor recreational areas, and the trial court properly granted summary judgment for the state under that statute.

Were the dissenting opinion omitted in this case, the majority holding would appear to be quite well founded. The minority, in a very reasoned dissent, contended that the Legislature could not have intended the tort liability exemption of subdivision 3(h) to apply to property damage occurring outside the outdoor recreation area, but rather must have intended the exemption to apply only to liability for damages incurred by users within the area.

The dissent states:

> The majority misconstrues Minn. Stat. § 3.736, subd. 3(h), to shield the state from liability for losses occurring outside the outdoor recreation system. Assuming subdivision 3(h) does grant immunity to the state in this case, that grant amounts to a violation of equal protection under U.S. Const. amend. XIV, § 1, and Minn. Const. art. 1, § 2. It further violates Minn. Const. art. 1, § 8, which provides, "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character.",

and cites the "trespasser" exception to the exemption as evidence that the exemption should only be applied to persons within the area.

At any rate, though not specifically recommended by the Court, it is possible that the Legislature might wish either to affirm the Court's holding by inserting "wherever the loss occurs" or possibly adopt the rationale of the dissent by inserting "to a user within the boundaries," or similar language within clause (h).

Section 176.101, Subdivision 1

McCLISH v. PAN-O-GOLD BAKING CO.

McClish v. Pan-O-Gold Baking Company, 336 N.W.2d 538 (August 5, 1983) was an appeal from an award of temporary total and permanent partial disability benefits by the Workers' Compensation Court of Appeals. Because the claimant was awarded federal social security disability benefits, the employer and insurer contended that temporary total disability benefits payable under section 176.101, subdivision 1, were subject to a set-off because of the provision of subdivision 4 which provides that:

> * * * after a total of $25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision. This reduction shall also apply to any old age and survivor insurance benefits. * * *

The claimant contended that the quoted set-off only applies against permanent total disability benefits.

The Supreme Court sided with the claimant and upheld the Court of Appeals, stating:

> The compensation schedule for temporary total disability (with no offset provisions) is contained in section 176.101, subd. 1, while permanent total disability is explicitly governed by section 176.101, subd. 4 which does not contain the offset provision. * * * If the legislature had intended the offset provision of subd. 4 to include permanent and temporary disability, it could easily have provided an explicit provision to that effect.

and later:

> If the legislature desires to extend the offset, it should include a provision in section 176.101, subd. 1 similar to

the one found in section 176.101, subd. 4.

Because the subject of offsets in workers' compensation cases is very complex it appears likely that the Legislature intended this distinction to exist. Hence no recommendation is made.

Section 471.705, Subdivision 2

MERZ v. LEITCH

Merz v. Leitch, 342 N.W.2d 141 (January 13, 1984) was an action charging a violation of the state's open meeting law, section 471.705. Claims of a violation were dismissed by the District Court, and the claimants appealed the dismissal. The dismissal was affirmed by the Supreme Court which, in effect, used the case primarily to serve as a notice that future violations would not be tolerated.

The case is included only because of a statement by one Justice in a special concurrence:

> Subdivision 2 of Minn. Stat. § 471.705 (1982) provides that on a third violation of the Open Meeting Law the violator forfeits both the right to continued tenure in office and the right to run again for that office for a period of time equal to the term of office such person was then serving. In other words, three violations, even if harmless and committed in good faith, if unrelated, result in a mandatory forfeiture of office. * * * I agree with this court's opinion but wish to add that I believe the forfeiture of office provision in the statute, particularly as this court has now construed the law, may be constitutionally infirm.

The Justice was referring to the case of Pavlak v. Growe, 284 N.W.2d 174, a 1979 case reported in the Report of the Revisor of Statutes, November 1980, in which the Supreme Court held that the law there under consideration imposed an additional qualification on a candidate for office and thus violated article IV, section 6 of the Minnesota Constitution. The rationale adopted in Pavlak, if applied to section 471.705, subdivision 2, could apparently also result in a finding of unconstitutionality.

The potential for an adverse finding on the constitutional issue could be eliminated by striking the "disqualification language" from section 471.705, subdivision 2.

Section 65B.44, Subdivision 6

PEEVY v. MUTUAL SERVICES CASUALTY INSURANCE CO.

Peevy v. Mutual Services Casualty Insurance Co., 346 N.W.2d 120 (March 23, 1984) arose when the appellant instituted an action seeking recovery of survivor's economic loss benefits under a no-fault auto insurance policy issued to her ex-husband who had died from auto accident injuries. Appellant had been receiving monthly spousal maintenance payments from her ex-husband under a dissolution decree.

The question to be resolved was whether the ex-wife of the decedent is a "surviving dependent" under section 65B.44, subdivision 6. It provides:

> * * * For the purposes of definition under sections 65B.41 to 65B.71, the following described persons shall be presumed to be dependents of a deceased person: (a) a wife is dependent on a husband with whom she lives at the time of his death; (b) a husband is dependent on a wife with whom he lives at the time of her death; (c) any child while under the age of 18 years, or while over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom he is living or from whom he is receiving support regularly at the time of the death of such parent. Questions of the existence and the extent of dependency shall be questions of fact, considering the support regularly received from the deceased.

The section entitled the appellant to economic loss benefits.

The Supreme Court stated that the statute "is not a model of clarity," and then proceeded to base a finding of dependency upon the language of the policy rather than the statute. Policy language included the spouse, any child under 18, and "Any other person dependent upon the insured at the time of the insured's death." The Court did however "commend the statute to the legislature for clarification." Perhaps a definition of

"survivor" more in tune with the policy definition than with the statute would be desirable.

Section 429.061, Subdivision 1

PETERSON v. CITY OF INVER GROVE HEIGHTS

Peterson v. City of Inver Grove Heights, 345 N.W.2d 274 (March 14, 1984) was an unsuccessful attempt by a property owner to appeal assessment of her property for construction of a new public road. Although the Court upheld the assessment, it was apparently quite unhappy with the notice provisions of the assessment procedure statute, section 429.061, subdivision 1. The Court concluded its opinion, stating:

> Finally, although we are upholding this assessment because the City council has followed the present statute, we are troubled by the statute as it reads and invite the legislature to review the notice requirements concerning assessments so that property owners will have a clearer picture of what is involved in the proposed assessment. We are primarily troubled by the fact that in the notice a dollar figure of the proposed assessment is not set out against a particular described property. (Emphasis added)

An examination of subdivision 1 reveals that the clerk, with the assistance of the engineer, is required to:

> calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece or parcel of land

and that then:

> The proposed assessment roll shall be filed with the clerk and be open to public inspection.

In the specifics of notice to the landowner, it is provided that:

> Such notice shall state the date, time and place of such meeting, the general nature of the improvement, the area proposed to be assessed, that the proposed assessment roll is on file with the clerk, and that written or oral objections thereto by any property owner will be considered. (Emphasis added)

The notice then appears only to tell the property owner

that his pending liability has been determined, and if he is concerned, he should come in and see just how much it is. The Court would apparently prefer that each notice state the specific amount assessed against the particular property. This would require an amendment to section 429.061, subdivision 1.

Section 268.06, Subdivision 5

PUBLIC HEALTH NURSING SERVICE OF DAKOTA COUNTY v. FREEMAN

Public Health Nursing Service of Dakota County v. Freeman, 340 N.W.2d 344 (December 2, 1983) was an action to review a decision of the Commissioner of Economic Security charging an employer for unemployment compensation benefits paid to a part-time employee. The Supreme Court affirmed the charge to the employer's account, holding that:

> [r]elator's account was properly charged for unemployment benefits paid to respondent where relator did not provide respondent with weekly part-time employment, meaning employment each and every week during the base period and current benefit period under Minn. Stat. § 268.06, subd. 5 (1982).

The Court had reached a contrary conclusion in Zoet v. Benson Hotel Corp, 274 N.W.2d 120 (Minn. 1978). Following that case the Legislature changed the statutory language from "give the employee part-time employment substantially equal to part-time employment previously furnished" to "provide weekly employment equal to at least 90 percent of the part-time employment provided in the base period." Laws 1979, c. 181 s. 4.

The Supreme Court was concerned with the adverse effect of the present wording upon opportunities for part-time employment and stated:

> Although the change in section 268.06, subd. 5, may appear inequitable and may frustrate opportunities for sporadic, intermittent part-time employment, it is not our role to question the wisdom of the legislature. Because, in the instant case, relator did not provide respondent with weekly part-time employment, we are bound to affirm.

A reversal of the 1979 legislation would address the concern expressed by the Court.

Section 181.13

ROBERTSON v. SPECIAL SCHOOL DISTRICT NO. 1

In Robertson v. Special School District No. 1, 347 N.W.2d 265 (April 20, 1984), the District was caught between conflicting provisions. Section 181.13 requires payment of wages due a discharged employee within 24 hours after demand under penalty of up to 15 days' wages for delay. Section 123.33, subdivision 5 prohibits a school district from contracting except by authority of a regular board meeting.

Since no board meeting was scheduled, the board failed to make payment of the wages demanded for more than 24 hours after demand and thus the District Court awarded the former employee 15 days' wages as a form of penalty, in accordance with section 181.14, holding that:

> [s]chool district which did not pay undisputed amount of wages due discharged employee until over a month after employee demanded payment was not exempt from statute exacting penalty wages from an employer who does not pay undisputed wages to discharged employee within 24 hours after demand, even if, under statute governing school district contracts, school district was powerless to comply with such a demand for payment without first seeking board approval for disbursement of funds at regular board meeting. M.S.A. §§ 123.33, subd. 5, 181.13.

The Court noted that there existed no statutory exemption from the 24-hour payment requirement, and stated:

> As a practical matter, the school board may wish to direct the attention of the legislature to the situation where it is powerless to comply with the demand for payment by an employee without first seeking board approval for the disbursement of funds and it is difficult to call the board together to satisfy the statutory time limitation.

To grant relief to public bodies from the 24-hour requirement in the future, a provision could be inserted into

section 181.14 either exempting public employers or commencing the 24-hour period only upon the first meeting of the governing body following demand.

Section 100.273, Subdivision 7

STATE v. CORBIN

State v. Corbin, 343 N.W.2d 874 (Minn. App. 1984) (February 8, 1984) was an appeal by the state from the dismissal of trespassing charges against two deer hunters. The hunters got permission to hunt a wooded area but were told by the land owner not to go into the standing corn. The next day they again asked to go into the corn field to retrieve a wounded deer, but were refused permission. The corn field was not posted. The hunters entered, retrieved the deer, and were charged with trespassing.

The District Court dismissed charges on the basis of section 100.273, subdivision 7, which provides:

> During the season for taking big or small game, a hunter may on foot retrieve a wounded big or small game animal from agricultural land of another which is not posted pursuant to subdivision 6, without permission of the landowner, and shall then leave as soon as possible.

The Supreme Court in affirming the dismissal pointed out that subdivision 7 was inconsistent with subdivision 3 of the same section which prohibits entry upon any land after notice by the owner. The court stated:

> We note that this interpretation allows limited entry on unposted agricultural land to retrieve a wounded animal after an oral notice not to do so, but would prohibit a similar entry on unposted nonagricultural land. Because the statute generally defines a more protected status for agricultural lands, an anomaly is created.
>
> The Legislature may desire to address this by (a) requiring affirmative permission to enter agricultural land regardless of the presence of a wounded animal, or (b) placing greater weight on the refusal of permission to enter agricultural land, or (c) providing an additional limited exception for hunters to enter nonagricultural land to retrieve wounded animals. Until it does so, we believe that statutory construction requires the interpretation

given by the trial court. If a landowner wishes to avoid this temporary intrusion on agricultural land, the owner should post the land, pursuant to Minn. Stat. § 100.273, subd. 6.

The Legislature may wish to consider one or another of the Court's stated alternatives. The subject of trespass by hunters is currently a very controversial subject. No recommendation is made.

Section 631.09

STATE v. HOLLY

State v. Holly, 350 N.W.2d 387 (Minn. App. 1984) (June 5, 1984) was an appeal from a conviction in a criminal sexual conduct case in which appellant won a reversal upon the grounds that the trial court's sending the jurors home overnight despite objections by both prosecution and defense constituted reversible error.

In concluding its opinion the Supreme Court stated:

> Finally, while unnecessary to decision, we observe that while Minn. Stat. § 631.09 has been updated to some extent, another update is in order. The statute provides that jurors are to be kept together without food or drink except water unless otherwise ordered by the court. This language is over a hundred years old and is reminiscent of a time when jurors were the virtual prisoners of court officers. A citizen juror serves as an arm of the court in resolving disputes between fellow citizens. A clause in a statute which provides that a juror be denied anything but water is punitive and inappropriate and should be removed. (Emphasis added)

The defect noted by the Court could be remedied by simply striking the offensive language from Section 631.09.

Section 609.11, Subdivision 8

STATE v. OLSON

State v. Olson, 325 N.W.2d 13 (October 11, 1982) and the related case of State v. Cundy involved an interpretation of the power granted a prosecuting attorney by section 609.11, subdivision 8 governing minimum terms of imprisonment and providing that:

> [p]rior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum terms of imprisonment established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion and if it finds substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum terms of imprisonment established by this section.

In both instances, the District Courts disregarded the statutory minimum terms of three years' imprisonment provided by section 609.11, subdivision 5 for use of a firearm in commission of an offense, stayed execution of sentence, and placed defendants on probation. (In one case the county attorney was requested by the Court but refused to move for disregarding the minimum sentence.)

The Supreme Court, upon appeal, upheld the sentences imposed in both instances, holding that:

> [t]he separation of powers doctrine mandates that power given to prosecutor by Minn. Stat. § 609.11, subd. 8, to initiate sentencing without regard to statutory mandatory minimum sentence must also be given to the courts.
>
> In order to effectuate the subdivision's paramount purpose of moderating the harsher sentencing law, accepted rules of statutory construction require interpretation of subdivision as impliedly giving to the courts as well as the prosecutor the power to initiate sentencing below the minimum.

The Supreme Court, in effect, held section 609.11, subdivision 8 unconstitutional without actually striking it down. To have done so might have been construed in a future case as a holding that there could be no departure from minimum terms. This result the Supreme Court apparently wished to avoid. Thus an amendment of subdivision 8 is in order, allowing departure from the minimum sentence upon the Court's own motion as well as upon the county attorney's recommendation.

A bill for an act

relating to statutes; conforming various laws to judicial decisions of unconstitutionality and suggestions for clarity; amending Minnesota Statutes 1984, sections 3.736, subdivision 3; 65B.44, subdivision 6; 181.13; 268.06, subdivision 5; 429.061, subdivision 1; 471.705, subdivision 2; 609.11, subdivision 8; and 631.09; repealing Minnesota Statutes 1984, section 422A.156.

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

Section 1. Minnesota Statutes 1984, section 3.736, subdivision 3, is amended to read:

Subd. 3. [EXCLUSIONS.] Without intent to preclude the courts from finding additional cases where the state and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses:

(a) Any loss caused by an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or regulation;

(b) Any loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused;

(c) Any loss in connection with the assessment and collection of taxes;

(d) Any loss caused by snow or ice conditions on any highway or other public place, except when the condition is affirmatively caused by the negligent acts of a state employee;

(e) Any loss caused by wild animals in their natural state;

(f) Any loss other than injury to or loss of property or personal injury or death;

(g) Any loss caused by the condition of unimproved real property owned by the state, which means land that the state has not improved, and appurtenances, fixtures and attachments to land that the state has neither affixed nor improved;

(h) Any loss incurred by a user within the boundaries of the outdoor recreation system and arising from the construction, operation, or maintenance of the ~~outdoor-recreation~~ system, as defined in section 86A.04, or from the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, except that the state is liable for conduct that would entitle a trespasser to damages against a private person.

(i) Any loss of benefits or compensation due under a program of public assistance or public welfare, except where state compensation for loss is expressly required by federal law in order for the state to receive federal grants-in-aid;

(j) Any loss based on the failure of any person to meet the standards needed for a license, permit, or other authorization issued by the state or its agents;

(k) Any loss based on the usual care and treatment, or lack of care and treatment, of any person at a state hospital or state corrections facility where reasonable use of available appropriations has been made to provide care;

(l) Any loss, damage, or destruction of property of a patient or inmate of a state institution;

(m) Any loss for which recovery is prohibited by section 169.121, subdivision 9.

The state will not pay punitive damages.

Sec. 2. Minnesota Statutes 1984, section 65B.44, subdivision 6, is amended to read:

Subd. 6. [SURVIVORS ECONOMIC LOSS BENEFITS.] Survivors economic loss benefits, in the event of death occurring within one year of the date of the accident, caused by and arising out of injuries received in the accident, are subject to a maximum of $200 per week and shall cover loss accruing after decedent's death of contributions of money or tangible things of economic value, not including services, that his surviving dependents would have received for their support during their dependency from the decedent had he not suffered the injury causing death.

For the purposes of definition under sections 65B.41 to 65B.71, the following described persons shall be presumed to be dependents of a deceased person: (a) a ~~wife~~ spouse is dependent ~~on-a-husband-with-whom~~ upon the deceased spouse with whom he or she lives at the time of ~~his~~ death; (b) ~~a-husband-is-dependent on-a-wife-with-whom-he-lives~~ an ex-spouse entitled to maintenance or support under a court order is dependent upon the deceased ex-spouse at the time of ~~her~~ death; (c) any child while under the age of 18 years, or while over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom he is living or from whom he is receiving support regularly at the time of the death of such parent. Questions of the existence and the extent of dependency shall be

questions of fact, considering the support regularly received from the deceased.

Payments shall be made to the dependent, except that benefits to a dependent who is a child or an incapacitated person may be paid to the dependent's surviving parent or guardian. Payments shall be terminated whenever the recipient ceases to maintain a status which if the decedent were alive would be that of dependency.

Sec. 3. Minnesota Statutes 1984, section 181.13, is amended to read:

181.13 [PENALTY FOR FAILURE TO PAY WAGES PROMPTLY.]

When any person, firm, company, association, or corporation employing labor within this state discharges a servant or employee, the wages or commissions actually earned and unpaid at the time of the discharge shall become immediately due and payable upon demand of the employee. If the employee's earned wages and commissions are not paid within 24 hours after such demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the discharged employee may charge and collect the amount of his or her average daily earnings at the rate agreed upon in the contract of employment, for such period, not exceeding 15 days, after the expiration of the 24 hours, as the employer is in default, until full payment or other settlement, satisfactory to the discharged employee, is made. <u>In the case of a public employer where approval of expenditures by a governing board is required, the 24-hour period for payment shall not commence until the date of the</u>

first regular or special meeting of the governing board following discharge of the employee. The wages and commissions must be paid at the usual place of payment unless the employee requests that the wages and commissions be sent to him or her through the mails. If, in accordance with a request by the employee, the employee's wages and commissions are sent to the employee through the mail, the wages and commissions shall be deemed to have been paid as of the date of their postmark for the purposes of this section.

Sec. 4. Minnesota Statutes 1984, section 268.06, subdivision 5, is amended to read:

Subd. 5. [BENEFITS CHARGED AS AND WHEN PAID.] Benefits paid to an individual pursuant to a valid claim shall be charged against the account of his employer as and when paid, except that benefits paid to an individual who ~~earned base period wages for part time employment shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer if the employer: (1) provided weekly base period part time employment; (2) continues to provide weekly employment equal to at least 90 percent of the part time employment provided in the base period; and (3) is an interested party because of the individual's loss of other~~ employment during his base period earned wages for part-time employment with an employer who continues to give the employee part-time employment substantially equal to the part-time employment previously furnished the employee by the employer shall not be charged to the employer's account. The amount of

benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wage credits of the individual earned from such employer bear to the total amount of base period wage credits of the individual earned from all his base period employers.

In making computations under this provision, the amount of wage credits if not a multiple of $1, shall be computed to the nearest multiple of $1.

Benefits shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer for unemployment that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 (42 United States Code 5122(2)), if the unemployed individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits.

Sec. 5. Minnesota Statutes 1984, section 429.061, subdivision 1, is amended to read:

Subdivision 1. [CALCULATION, NOTICE.] At any time after the expense incurred or to be incurred in making an improvement shall be calculated under the direction of the council, the council shall determine by resolution the amount of the total expense the municipality will pay, other than the amount, if any, which it will pay as a property owner, and the amount to be assessed. If a county proposes to assess within the boundaries

of a city for a county state-aid highway or county highway, the resolution must include the portion of the cost proposed to be assessed within the city. The county shall forward the resolution to the city and it may not proceed with the assessment procedure under this section for property within the city unless the city council adopts a resolution approving the assessment. Thereupon the clerk, with the assistance of the engineer or other qualified person selected by the council, shall calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece or parcel of land, without regard to cash valuation, in accordance with the provisions of section 429.051. The proposed assessment roll shall be filed with the clerk and be open to public inspection. The clerk shall thereupon, under the council's direction, publish notice that the council will meet to consider the proposed assessment. Such notice shall be published in the newspaper at least once and shall be mailed to the owner of each parcel described in the assessment roll. For the purpose of giving mailed notice under this subdivision, owners shall be those shown to be such on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. Such publication and mailing shall be no less than two weeks prior to such meeting of the council. Except as to the owners of tax exempt property or property taxes on a gross earnings basis, every property owner whose name does not appear on the records

of the county auditor or the county treasurer shall be deemed to have waived such mailed notice unless he has requested in writing that the county auditor or county treasurer, as the case may be, include his name on the records for such purpose. Such notice shall state the date, time, and place of such meeting, the general nature of the improvement, the area proposed to be assessed, the amount to be specially assessed against that particular lot, piece, or parcel of land, that the proposed assessment roll is on the file with the clerk, and that written or oral objections thereto by any property owner will be considered. No appeal may be taken as to the amount of any assessment adopted pursuant to subdivision 2, unless a written objection signed by the affected property owner is filed with the municipal clerk prior to the assessment hearing or presented to the presiding officer at the hearing. The notice shall also state that an owner may appeal an assessment to district court pursuant to section 429.081 by serving notice of the appeal upon the mayor or clerk of the municipality within 30 days after the adoption of the assessment and filing such notice with the district court within ten days after service upon the mayor or clerk. The notice shall also inform property owners of the provisions of sections 435.193 to 435.195 and the existence of any deferment procedure established pursuant thereto in the municipality.

Sec. 6. Minnesota Statutes 1984, section 471.705, subdivision 2, is amended to read:

Subd. 2. Any person who violates subdivision 1 shall be

subject to personal liability in the form of a civil penalty in an amount not to exceed $100 for a single occurrence. An action to enforce this penalty may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located. ~~Upon-a-third-violation-by-the same-person-connected-with-the-same-governing-body,-such-person shall-forfeit-any-further-right-to-serve-on-such-governing-body or-in-any-other-capacity-with-such-public-body-for-a-period-of time-equal-to-the-term-of-office-such-person-was-then-serving. The-court-determining-the-merits-of-any-action-in-connection with-any-alleged-third-violation-shall-receive-competent, relevant-evidence-in-connection-therewith-and,-upon-finding-as to-the-occurrence-of-a-separate-third-violation,-unrelated-to the-previous-violations-issue-its-order-declaring-the-position vacant-and-notify-the-appointing-authority-or-clerk-of-the governing-body.--As-soon-as-practicable-thereafter-the appointing-authority-or-the-governing-body-shall-fill-the position-as-in-the-case-of-any-other-vacancy.~~

Sec. 7. Minnesota Statutes 1984, section 609.11, subdivision 8, is amended to read:

Subd. 8. [~~MOTION-BY-PROSECUTOR~~ DISREGARD OF MINIMUM TERM.] Prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum terms of imprisonment established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion and if it finds substantial mitigating factors exist, the court

shall sentence the defendant without regard to the mandatory minimum terms of imprisonment established by this section. In addition, the court may, upon its own motion, sentence the defendant without regard to the mandatory minimum terms upon a finding of substantial mitigating factors.

Sec. 8. Minnesota Statutes 1984, section 631.09, is amended to read:

631.09 [JURY; HOW AND WHERE KEPT WHILE DELIBERATING; SEPARATE ACCOMMODATIONS FOR JURORS.]

After hearing the charge the jury may either decide in court, or retire for deliberation, if it shall not agree without retiring, one or more officers shall be sworn to take charge of it, and it shall be kept together in some private and convenient place, ~~without food or drink except water, unless otherwise ordered by the court,~~ and no person shall be permitted to speak to or communicate with it or any one of its number unless by order of court, nor listen to the deliberations; and it shall be returned into court when agreed, or when so ordered by the court. In case of mixed juries counties shall provide adequate, separate quarters for male and female jurors with proper accommodations and, in the event the county fails to provide proper accommodations, the court shall order the jurors kept in a suitable hotel for the night.

This section applies only in cases where the jury has failed to agree.

Sec. 9. [REPEALER.]

Minnesota Statutes 1984, section 422A.156, is repealed.