

section.

Subd. 3. PROCEDURES. The commissioner shall establish uniform procedures for the implementation of this section. The procedures shall be adopted as temporary rules and, notwithstanding the limitations of Minnesota Statutes, Section 15.0412, shall be effective for the duration of the band width certification program unless superseded, repealed or amended by temporary or other rule. When a list of certified eligibles prepared pursuant to this section is supplied to an appointing authority, the list shall be accompanied by an explanation of the program and a copy or summary of applicable rules.

Subd. 4. MONITORING; REPORT. No later than January 1, 1980, the commissioner shall provide the governor and the legislature with a report giving the procedures, results, costs and evaluations of the program and the substance of comments received from affected persons. In the report he shall recommend whether to continue the program and what changes may be necessary. Periodically throughout the duration of the program he shall advise the governmental operations committees of the senate and the house of representatives and the legislative audit commission on the progress of the program and his evaluation to date.

Sec. 18. APPROPRIATIONS. \$244,700 is appropriated from the general fund in the state treasury to the commissioner of personnel for the period ending June 30, 1979, to be used for personnel technical services, revision and mailing of job announcements, establishment of a toll free telephone service to assist potential applicants, determination of applicant availability and any other activity authorized by this act.

The authorized complement of the department is increased by ten persons.

Sec. 19. EFFECTIVE DATE. This act is effective the day following final enactment. Section 17 expires June 30, 1980. Procedures relating to examinations announced prior to May 1, 1978, shall be completed pursuant to law in effect on the day prior to the effective date of this act. Certifications of eligibles in force on May 1, 1978, shall remain effective pursuant to law in effect on the day prior to the effective date of this act.

Approved April 5, 1978.

CHAPTER 735-S.F.No.1943

[Coded in Part]

An act relating to natural resources; concerning forestry; regulating the maintenance of fires; amending Minnesota Statutes 1976, Sections 88.01, by adding a subdivision; 88.10; 88.16; 88.17; 88.22; 88.73; 88.75, Subdivision 1; 88.76; 88.77; and 88.78.

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

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Section 1. Minnesota Statutes 1976, Section 88.01, is amended by adding a subdivision to read:

Subd. 23. OPEN FIRE. "Open fire" means a fire burning in matter, whether concentrated or dispersed, which is not contained within a fully enclosed firebox, structure or vehicle and from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct or chimney.

Sec. 2. Minnesota Statutes 1976, Section 88.10, is amended to read:

88.10 FIGHTING FOREST FIRES, AUTHORITY OF STATE FOREST OFFICERS. Subdivision 1. Under the direction of the commissioner, forest officers are charged with preventing and extinguishing forest fires in their respective districts and the performance of such other duties as may be required by him. They may arrest without warrant any person found violating any provisions of sections 88.03 to ~~88.24~~ 88.22, take him before a court of competent jurisdiction in the county charging the person so arrested, and the person so charged shall be arraigned and given a hearing on the complaint. The forest officers shall not be liable in civil action for trespass committed in the discharge of their duties. All authorized state forest officers, including rangers, guards, township fire wardens, smoke chasers, fire foremen or individuals legally employed as fire fighters, may in the performance of their duties of fire fighting go onto the property of any person, company, or corporation and in so doing may set backfires, dig or plow trenches, cut timber for clearing fire lines, dig water holes, remove fence wires to provide access to the fire or carry on all other customary activities necessary for the fighting of forest, prairie or brush fires without incurring a liability to anyone, except for damages arising out of wilful or gross negligence.

Subd. 2. Any forest officer may serve any warrant for the arrest of any person violating any provision of sections 88.03 to ~~88.24~~ 88.22 and for that purpose all forest officers are hereby vested with the same powers as constables or other similar officers of the courts issuing such warrants.

Sec. 3. Minnesota Statutes 1976, Section 88.16, is amended to read:

88.16 STARTING FIRES; CAMPFIRES; INCINERATORS; BURNING BAN. Subdivision 1. Except as provided in subdivision 2, it shall be unlawful, when the ground is not snow-covered, in any place where there are standing or growing native coniferous trees, or in areas of ground from which ~~native natural~~ coniferous trees have been cut, or where there are slashings of such trees, or native brush, timber, slashings thereof, or excavated stumps, or where there is peat or peat roots excavated or growing; to start or have any open fire; ~~or any back-fire,~~ without the written permission of the commissioner; or other authorized forest officer.

Subd. 2. No permit is required for the following open fires:

(a) A cooking or warming fire contained in a fireplace, fire-ring, charcoal grill, portable gas or liquid fueled camp stove or other similar container or device designed for the purpose of cooking or heating, or if the area within a radius of five feet of the fire is

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reasonably clear of all combustible material.

(b) The burning of grass, leaves, rubbish, garbage, branches, and similar combustible material in an approved incinerator. An approved incinerator shall be constructed of fire resistant material, have a capacity of at least three bushels, be maintained with a minimum burning capacity of at least two bushels, and have a cover which is closed when in use and openings in the top or sides of one inch maximum diameter. No combustible material shall be nearer than three feet to the burner or incinerator when in use.

Subd. 2 ~~3~~. The occupant of any premises upon which any unauthorized fire is burning in the vicinity of forest lands, whether the fire was started by him or otherwise, shall promptly report the fire to the commissioner, or to the nearest forest officer or fire warden. Failure to make this report shall be deemed a violation of sections 88.03 to ~~88.21~~ 88.22 and the occupant of the premises shall be deemed prima facie guilty of negligence if the unreported fire spreads from the premises to the damage, loss, or injury of the state or any person.

Sec. 4. Minnesota Statutes 1976, Section 88.17, is amended to read:

88.17 PERMISSION TO START FIRES; PROSECUTION FOR UNLAWFULLY STARTING FIRES. Subdivision 1. Permission to set fire to any grass, stubble, peat, brush, raking of leaves, rubbish, garbage, branches, slashings or woods for the purpose of cleanup, clearing and improving land or preventing other fire shall be given whenever the same may be safely burned, upon such reasonable conditions and restrictions as the commissioner may prescribe, to prevent same from spreading and getting beyond control. This permission shall be in the form of a written permit signed by a regular forest officer or some other suitable person to be designated by him, as town fire warden, these permits to be on forms furnished by the commissioner. ~~The commissioner, or any of his authorized assistants, may at his discretion in cases of extreme danger refuse, revoke, or postpone the use of permits to burn when such act is clearly necessary for the safety of life and property.~~ Any person setting any fire or burning anything under such permit shall keep the permit on his person while so engaged and produce and exhibit the permit to any forest officer, when requested to do so. ~~No permit is required for the burning of grass, leaves, rubbish, garbage, branches and similar combustible material under the following conditions: (1) The material shall be burned within an incinerator or burner constructed of fire resistant material having a capacity of not less than three bushels and maintained with a minimum burning capacity of not less than two bushels; a cover which is closed when in use, and maximum openings in the top or sides no greater than one inch in diameter; and (2) No combustible material shall be nearer than three feet to the burner or incinerator when it is in use.~~

Subd. 2. In any prosecution under sections 88.03 to ~~88.21~~ 88.22 for unlawfully starting or setting or having or permitting the continuation or spread of any fire or back-fire, proof upon the part of the prosecution that such fire or back-fire originated upon, or was permitted to burn upon, or that it spread from, lands or premises occupied by the person charged with the offense, and that this person had knowledge of the fire and made no effort to put it out, shall be prima facie evidence that he is guilty. The

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burden of proof as to any matter in refutation of this prima facie guilt, or in extenuation or excuse, shall be and rest upon the person so appearing prima facie to be guilty.

Sec. 5. Minnesota Statutes 1976, Section 88.22, is amended to read:

88.22 FOREST FIRE PREVENTION; CLOSING FOREST ROADS AND TRAILS; PROHIBITING OPEN FIRES AND SMOKING; REGULATING PRIVATE AND PUBLIC DUMPING AREAS; PENALTIES. Subdivision 1. When the commissioner of natural resources shall determine that conditions conducive to forest fire hazards exist in the forest areas of the state and that the presence of persons in the forest areas tends to aggravate forest fire hazards, render forest trails impassable by driving thereon during wet seasons and hampers the effective enforcement of state timber trespass and game laws, he may by written order, close any road or trail leading into any land used for any conservation purposes, to all modes of travel except that considered essential such as residents traveling to and from their homes or in other cases to be determined by the authorized forest officers assigned to guard the area. The commissioner may also, upon such determination, by written order, ~~prohibit the building of all campfires except by permit issued by an authorized officer~~ suspend the issuance of permits for open fires, revoke or suspend the operation of a permit previously issued and, to the extent he deems necessary, prohibit the building of all or some kinds of open fires in all or any part of a forest area regardless of whether a permit is otherwise required; and the commissioner also may, by written order, prohibit smoking except at places of habitation or automobiles or other enclosed vehicles properly equipped with an efficient ash tray.

Subd. 2. *The commissioner may close any public or private dumping area, by posting such area as closed to dumping, whenever he deems it necessary for the prevention of forest fires. Thereafter no person shall deposit refuse of any kind within or adjacent to such closed area, or along the road leading thereto.*

The commissioner shall establish such minimum standards governing public and private dumping areas as he deems necessary for the prevention of forest fires.

Subd. 3. Any violations of this section shall constitute a misdemeanor.

Sec. 6. Minnesota Statutes 1976, Section 88.73, is amended to read:

88.73 ADMINISTRATION; DELEGATED POWERS AND DUTIES. *The director is hereby empowered and directed to administer and enforce sections 88.03 to ~~88.24~~ 88.22; and, to that end, he may make and enforce all necessary or convenient rules and regulations not inconsistent with the provisions and purposes of these sections. In every case the powers delegated to, and the duties imposed upon, the director, and other state or municipal representatives by sections 88.03 to ~~88.24~~ 88.22 shall be exercised and performed in good faith, without undue oppression, and in a manner as reasonable as the exigencies of the situation will permit.*

Nothing in sections 88.03 to ~~88.24~~ 88.22 shall be construed as abrogating the laws specifically governing state parks or other public parks, or state or municipal forests. The provisions of all such laws and of sections 88.03 to ~~88.24~~ 88.22 shall be harmonized and

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both given effect wherever possible.

Nothing in sections 88.03 to ~~88.24~~ 88.22 shall be construed as restricting the state, or any political subdivision thereof, in the exercise of any power, right, or privilege which may be conferred by separate enactment of the legislature under authority of the so-called forest fire prevention amendment to the State Constitution, approved by vote of the electors of this state at the general election held in November, 1924.

Sec. 7. Minnesota Statutes 1976, Section 88.75, Subdivision 1, is amended to read:

88.75 VIOLATIONS; PENALTIES. Subdivision 1. Any person who violates any of the provisions of sections 88.03 to ~~88.24~~ 88.22 for which no specific penalty is therein prescribed shall be guilty of a misdemeanor and be punished accordingly.

Failure by any person to comply with any provision or requirement of sections 88.03 to ~~88.24~~ 88.22 to which such person is subject shall be deemed a violation thereof.

Any person who violates any provisions of sections 88.03 to ~~88.24~~ 88.22, in addition to any penalties therein prescribed, or hereinbefore in this section prescribed, for such violation, shall also be liable in full damages to any and every person suffering loss or injury by reason of such violation, including liability to the state, and any of its political subdivisions, for all expenses incurred in fighting or preventing the spread of, or extinguishing, any fire caused by, or resulting from, any violation of these sections. When a fire set by any person spreads to and damages or destroys property belonging to another, the person setting the fire shall be prima facie guilty of negligence in setting and allowing the same to spread.

At any time the state, or any political subdivision thereof, either of its own motion, or at the suggestion or request of the director, may bring an action in any court of competent jurisdiction to restrain, enjoin, or otherwise prohibit any violation of sections 88.03 to ~~88.24~~ 88.22, whether therein described as a crime or not, and likewise to restrain, enjoin, or prohibit any person from proceeding further in, with, or at any timber cutting or other operations without complying with the provisions of those sections, or the requirements of the director pursuant thereto; and the court may grant such relief, or any other appropriate relief, whenever it shall appear that the same may prevent loss of life or property by fire, or may otherwise aid in accomplishing the purposes of sections 88.03 to ~~88.24~~ 88.22.

Sec. 8. Minnesota Statutes 1976, Section 88.76, is amended to read:

88.76 REWARDS. Upon conviction of any person for violating any of the provisions of sections 88.03 to ~~88.24~~ 88.22, the director, at his discretion, may pay, from any money placed at his disposal under those sections, a reward of not more than \$25 to the person or persons giving the information leading to such conviction.

Sec. 9. Minnesota Statutes 1976, Section 88.77, is amended to read:

88.77 DISPOSAL OF FINES AND PENALTIES. Except as otherwise expressly
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provided in sections 88.03 to ~~88.21~~ 88.22, all moneys received as penalties for violations of the provisions of those sections, less the cost of collection, shall be paid into the treasury of the county in which the penalties for these violations were imposed; provided, that fines collected for violations of those sections, where prosecutions are instituted upon the complaint of town or city officers duly appointed by the director as fire wardens, shall be paid into the treasury of the town or city where the offense was committed.

Sec. 10. Minnesota Statutes 1976, Section 88.78, is amended to read:

88.78 APPEALS. No appeal shall be allowed from a judgment in any court of a justice of the peace, or a municipal court, or other similar court, to the district court in any prosecution under sections 88.03 to ~~88.21~~ 88.22, unless the person appealing shall, within the time prescribed by law, enter into a recognizance, with sufficient sureties, or deposit cash bail in twice the amount of the fine and costs, to be approved by the justice, conditioned to appear before the district court on the first day of the next general term thereof to be held in and for the same county, and abide the judgment of the court therein.

The justice or judge may examine the proposed sureties under oath and, in such case, shall make and keep a record of their answers in respect to the kinds and amount of their property not exempt from execution, and he shall furnish a copy of the same to the director.

When an arrest shall have been made for violation of any of the provisions of sections 88.03 to ~~88.21~~ 88.22, or when information of such violation shall have been lodged with him, the county attorney of the county in which the offense was committed shall prosecute the accused with diligence and energy.

Sec. 11. **EFFECTIVE DATE.** This act is effective the day following its final enactment.

Approved April 5, 1978.

CHAPTER 736-S.F.No.2361

[Coded in Part]

An act relating to peace officers; setting forth criteria for the use of deadly force by peace officers; amending Minnesota Statutes 1976, Sections 609.065; 629.33; and Chapter 609, by adding a section.

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

Section 1. Minnesota Statutes 1976, Section 609.065, is amended to read:

609.065 JUSTIFIABLE TAKING OF LIFE. The intentional taking of the life of another is not authorized by section 609.06, except when necessary in ~~the following cases:~~

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