

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

Section 1. Minnesota Statutes 1980, Section 525.145, is amended to read:

## 525.145 DESCENT OF HOMESTEAD.

(1) Where there is a surviving spouse the homestead, including a mobile home which is the family residence, shall descend free from any testamentary or other disposition thereof to which ~~such~~ the spouse has not consented in writing or by election to take under the will as provided by law, as follows:

(a) If there be no surviving child or issue of any deceased child, to the spouse;

(b) If there be children or issue of deceased children surviving, then to the spouse for the term of ~~his~~ the spouse's natural life and the remainder in equal shares to ~~such~~ the children and the issue of deceased children by right of representation.

(2) Where there is no surviving spouse and the homestead has not been disposed of by will it shall descend as other real estate.

(3) Where the homestead passes by descent or will to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death; in all other cases it shall be subject to the payment of the items mentioned in section 525.16. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce ~~such~~ the lien or charge by an appropriate action in the district court.

## Sec. 2. EFFECTIVE DATE.

This act is effective the day after final enactment.

Approved May 6, 1981

## CHAPTER 106 — S.F.No. 1057

*An act relating to the state fire marshal; deleting references to a dedicated fund and to archaic misdemeanor fines; prescribing procedures for the investigation of fires; repealing obsolete statutory requirements pertaining to flammable liquids, fire extinguishers, doors of buildings, and theaters; correcting an erroneous designation of responsibility concerning fire insurance premium returns; setting a penalty; amending Minnesota Statutes 1980, Sections 299F.011, Subdivision 1; 299F.08; 299F.09; 299F.19; 299F.20; 299F.21; 299F.22; 299F.23; 299F.24; 299F.26, Subdivision 1; 299F.29; 299F.31; 299F.36, Subdivision 2; 299F.391, Subdivision 1; and 299F.46, Subdivision 1; repealing Minnesota Statutes 1980, Sections 299F.011, Subdivision 2; 299F.27; 299G.10; 299H.01; 299H.02; and 299H.28, Subdivision 1.*

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

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

Section 1. Minnesota Statutes 1980, Section 299F.011, Subdivision 1, is amended to read:

Subdivision 1. The commissioner of public safety through the division of fire marshal may promulgate a uniform fire code and make amendments thereto in accordance with the administrative procedure act, in chapter 15. The code and its amendments shall conform insofar as practicable to model fire codes generally accepted and in use throughout the United States, with consideration given to existing statewide specialty codes presently in use in the state of Minnesota. Statewide specialty codes and model codes with necessary modifications may be adopted by reference in accordance with section 15.0412, subdivision 4a.

Sec. 2. Minnesota Statutes 1980, Section 299F.08, is amended to read:  
**299F.08 PREMISES, WHEN ENTERED.**

Subdivision 1. **IMMEDIATE ENTRY.** In the performance of the duties imposed by the provisions of this chapter, the state fire marshal, and any of his subordinates, at all times of day or night may enter upon and examine during and within a reasonable time after a fire has been extinguished, may enter any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto to investigate and gather evidence. In determining whether a search is reasonable within the meaning of this subdivision, the need for investigatory search for the cause of the fire shall be balanced against the privacy rights of the occupant or owner of the building or premises.

Subd. 2. **ADMINISTRATIVE SEARCH WARRANT.** After the reasonable time prescribed by subdivision 1 for an investigatory search has expired, subsequent entries to the building or premises to investigate and gather evidence may be made only if there is consent from the owner or occupant of the building or premises or pursuant to an administrative search warrant issued by a judge.

In determining whether to issue an administrative search warrant for the purposes of this subdivision, the judge, in conforming his decision to constitutional doctrine governing warrant procedures for administrative searches, shall consider but not be limited to the following factors:

- (a) Scope of the proposed search;
- (b) Number of prior entries by fire officials;
- (c) Time of day when the search is proposed to be made;
- (d) Lapse of time since the fire;
- (e) Continued use of the building; and

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(f) The owner's or occupant's efforts to secure the building against intruders.

Subd. 3. CRIMINAL SEARCH WARRANT. If during the course of an investigatory search under an administrative search warrant issued in accordance with subdivision 2, the fire marshal or any of his subordinates find probable cause to believe arson has occurred and require further access to the building or premises to gather evidence for possible prosecution, a criminal search warrant must be obtained from a judge.

Sec. 3. Minnesota Statutes 1980, Section 299F.09, is amended to read:

**299F.09 BUILDINGS, ENTERED WITHIN REASONABLE HOURS.**

The state fire marshal, his chief assistant, deputies, and subordinates, the chief of the fire department of each city where a fire department is established, the mayor of a city where no fire department exists, or the clerk of a town in territory without the limits of a city, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of examination, after proper consent from the occupant or owner or pursuant to an administrative search warrant. If the examination occurs subsequent to a fire, entry into a building or premise is governed by section 299F.08.

Sec. 4. Minnesota Statutes 1980, Section 299F.19, is amended to read:

**299F.19 REGULATIONS RULES ON FLAMMABLE LIQUIDS AND EXPLOSIVES.**

Subdivision 1. ~~The state fire marshal commissioner of public safety shall make, promulgate, and enforce reasonable~~ adopt rules and regulations for the safekeeping, storage, handling, use, transportation, or other disposition of flammable liquids, flammable gases, blasting agents, and explosives except transportation by petroleum carriers as covered in chapter 221; but loads carried in or on vehicles transporting such products upon public highways within this state shall be governed by the uniform vehicle size and weights provisions in sections 169.80 to 169.88. ~~The rules and regulations for flammable liquids and flammable gases shall be distinguished from each other and from the rules and regulations covering other materials subject to regulation under this subdivision.~~

Subd. 2. ~~For the purposes of this section, and the rules and regulations adopted pursuant thereto, the term flammable liquids shall mean any liquid having a flash point below 200 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch, absolute, at 100 degrees Fahrenheit. The term flammable gases includes flammable materials which do not exist as a liquid or solid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.~~

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For the purposes of this section, and the rules and regulations adopted pursuant thereto, the term blasting agent ~~shall mean~~ means any material or mixture, consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive and in which none of the ingredients is classified as an explosive, providing that the finished product, as mixed and packaged for use or shipment, cannot be detonated by means of a Number 8 test blasting cap when unconfined. The term blasting agent does not include flammable liquids or flammable gases.

For the purposes of this section, and the rules and regulations adopted pursuant thereto, explosives ~~shall be~~ are divided into three classes and are defined as follows:

Class A explosives. Possessing detonating or otherwise maximum hazard, such as dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, ~~black powder~~, blasting caps, and detonating primers.

Class B explosives. Possessing flammable hazard, such as propellant explosives (including some smokeless powders), black powder, photographic flash powders, and some special fireworks.

Class C explosives. Includes certain types of manufactured articles which contain Class A, or Class B explosives, or both, as components but in restricted quantities.

The term explosive or explosives ~~shall mean~~ means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the interstate commerce commission. The term explosives ~~shall include~~ includes all material which is classified as Class A, Class B, and Class C explosives by the interstate commerce commission, and includes, but is not limited to dynamite, black powder, pellet powder, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squips, cordeau detonate fuse, instantaneous fuse, igniter cord, igniters, and some special fireworks. Commercial explosives are those explosives which are intended to be used in commercial or industrial operation. The term explosives does not include flammable liquids or flammable gases.

Subd. 3. No local government shall enact any regulation or ordinance which is inconsistent with the rules and regulations adopted by the ~~state fire marshal~~ commissioner of public safety pursuant to this section. Nothing in this section shall be construed to affect the power of any local government, when so authorized by law, to regulate the use of land by zoning. Any city in which there is no comprehensive zoning ordinance in effect may prohibit the installation or erection of flammable liquid bulk plants within areas which are predominantly residential or in areas used predominantly for retail mercantile

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purposes. Any city may prescribe routes for the transportation of flammable liquids through such city by motor vehicle transport.

Subd. 4. The fire marshal of each city of the first class, the chief of the fire department of each other city in which a fire department is established, the mayor of each city in which no fire department exists, the president of the statutory city board of each statutory city in which no fire department exists, and the town clerk of each town without the limits of any city shall, ~~upon direction of the state fire marshal, or assistant state fire marshal,~~ enforce within their respective jurisdictions all rules ~~and regulations~~ adopted pursuant to this section and shall render such other assistance as may be requested.

Subd. 5. Any violation of a rule ~~or regulation~~ shall constitute a misdemeanor.

Subd. 6. The code and all amendments thereto shall be filed with the secretary of state and published in accordance with sections 15.046 to 15.049.

Sec. 5. Minnesota Statutes 1980, Section 299F.20, is amended to read:

**299F.20 FAILURE TO COMPLY, PUNISHMENT.**

Any officer referred to in section 299F.04 who neglects to comply with any of the requirements of this chapter ~~shall, upon conviction, be punished by a fine of not less than \$25 nor more than \$100 for each neglect or violation is guilty of a misdemeanor.~~

Sec. 6. Minnesota Statutes 1980, Section 299F.21, is amended to read:

**299F.21 FIRE INSURANCE COMPANIES TO PAY COST OF MAINTENANCE.**

~~For the purpose of maintaining the office of the state fire marshal and paying all the expenses incident thereto,~~ Every insurance company, including reciprocals, interinsurance exchanges or Lloyds, doing business in the state, excepting farmers' mutual fire insurance companies and township mutual fire insurance companies, shall hereafter pay to the state treasurer on or before March 1 annually, a tax upon its fire premiums or assessments or both, as follows:

A sum equal to one-half of one percent of the gross premiums and assessments, less return premiums, on all direct business received by it in this state, or by its agents for it, in cash or otherwise, during the preceding calendar year, including premiums on policies covering fire risks only on automobiles, whether written under floater form or otherwise. In the case of a mutual company or reciprocal exchange the dividends or savings paid or credited to members in this state shall be construed to be return premiums. The money so received into the state treasury shall be ~~set aside as a special fund and it is hereby appropriated for the maintenance of the office of the state fire marshal~~

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and the expenses incident thereto. The state shall not be liable in any manner for the salary of the state fire marshal, his chief assistant, deputies, clerks, and other employees, or for the maintenance of the office of fire marshal or any expenses incident thereto, and the same shall be payable only from the special fund provided for in this section credited to the general fund.

If the tax prescribed by this section is not paid by March 1, annually, a penalty of ten percent shall accrue on ~~such the~~ tax, and thereafter ~~such the~~ tax and penalty shall draw interest at the rate of one percent per month until paid.

Sec. 7. Minnesota Statutes 1980, Section 299F.22, is amended to read:

**299F.22 EXAMINATION OF RETURNS; ASSESSMENT; RETURNS.**

The commissioner of public safety insurance shall, as soon as practicable after a return required by section 299F.21, is filed, examine the same and make any investigation or examination of the company's records and accounts that he ~~may deem~~ deems necessary for determining the correctness of the return. The tax computed by him on the basis of ~~such the~~ examination and investigation ~~shall be~~ is the tax to be paid by ~~such the~~ company. If the tax found due ~~shall be~~ is greater than the amount reported as due on the company's return, the commissioner shall assess a tax in the amount of ~~such the~~ excess and the whole amount of ~~such the~~ excess shall be paid to the state treasurer within 30 days after notice of the amount and demand for its payment ~~shall have been~~ is mailed to the company by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the installments of the tax shown by the company on its return which ~~have not been~~ are not paid shall be paid to the state treasurer within 30 days after notice of the amount thereof and demand for payment ~~shall have been~~ is mailed to the company by the commissioner. If the amount of the tax found due the commissioner ~~shall be~~ is less than that reported as due on the company's return, the excess shall be refunded to the company in the manner provided by section 299F.26, except that no demand therefor ~~shall be~~ is necessary, if they have already paid the whole of ~~such the~~ tax, or credited against any unpaid installment thereof; provided, that no refundment shall be made except as provided in section 299F.26, after the expiration of three and one-half years after the filing of the return.

If the commissioner examines returns of a company for more than one year, he may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by sections 299F.22 to 299F.24 shall be in ~~such the~~ form as the commissioner ~~may determine~~ determines, including a statement, and shall contain a brief explanation of the computation

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of the tax and shall be sent by mail to the company at the address given in its return, if any, and if no such address is given, then to the last known address.

Sec. 8. Minnesota Statutes 1980, Section 299F.23, is amended to read:

**299F.23 ASSESSMENT, FAILURE TO FILE RETURN; FALSE OR FRAUDULENT RETURN FILED.**

If any company required by section 299F.21, to file any return ~~shall fail~~ fails to do so within the time prescribed or ~~shall make~~ makes, wilfully or otherwise, an incorrect, false, or fraudulent return, it shall, on the written demand of the commissioner of public safety insurance, file such the return, or corrected return, within 30 days after the mailing of such the written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such the company ~~shall fail~~ fails within that time to file such the return, or corrected return, the commissioner shall make for it a return or corrected return, from his own knowledge and from such the information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax, less any payments theretofore made on account of the tax for the taxable year covered by such the return, shall be paid within ten days after the commissioner has mailed to such the company a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the company to make a return, or a corrected return, ~~shall be~~ is prima facie correct and valid, and the company ~~shall have~~ has the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Sec. 9. Minnesota Statutes 1980, Section 299F.24, is amended to read:

**299F.24 COLLECTION OF TAX.**

The tax required to be paid by section 299F.21, may be collected in any ordinary action at law by the commissioner of public safety insurance against the company. In any action commenced pursuant to this section, upon the filing of an affidavit of default, the clerk of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Sec. 10. Minnesota Statutes 1980, Section 299F.26, Subdivision 1, is amended to read:

Subdivision 1. **PROCEDURE, TIME LIMIT, APPROPRIATION.** A company ~~who~~ which has paid, voluntarily or otherwise, or from ~~whom~~ which there ~~has been~~ was collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner of public safety insurance a claim for a refund of such the excess. Except as provided in subdivision 4, no such claim shall be entertained unless filed within two years after such the tax was paid or collected, or within three and one-half years from the filing of the return, whichever period is the longer.

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Upon the filing of a claim the commissioner shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof to the company at the address stated upon the return. If such claim is allowed in whole or in part, the commissioner shall issue his certificate for the refundment of the excess paid by the company, with interest at the rate of two percent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the company, and the commissioner of finance shall cause such the refund to be paid out of the proceeds of the taxes imposed by section 299F.21, as other state moneys are expended. So much of the proceeds of such the taxes as ~~may~~ be is necessary are hereby appropriated for that purpose.

Sec. 11. Minnesota Statutes 1980, Section 299F.29, is amended to read:

**299F.29 COUNTY AND CITY ATTORNEYS TO ASSIST.**

The county attorney and city attorneys of any county political subdivision, upon request of the state fire marshal, his deputies or assistants, shall assist such officers upon an investigation of any fire, which in their opinion is of suspicious origin.

Sec. 12. Minnesota Statutes 1980, Section 299F.31, is amended to read:

**299F.31 PENALTIES PAID INTO STATE TREASURY.**

All penalties, fees, or forfeitures collected under the provisions of this chapter shall be paid into the state treasury ~~for the benefit of the state fire marshal fund.~~

Sec. 13. Minnesota Statutes 1980, Section 299F.36, Subdivision 2, is amended to read:

Subd. 2. It ~~shall be~~ is unlawful for any person, firm or corporation directly or through an agent, to sell or offer for sale or, after the period allowed by the order provided for in subdivision 3, to have in possession any make, type or model of extinguisher, either new or used, for use as a fire extinguisher, unless such the make, type or model of extinguisher has first been tested and is approved and labeled by the Factory Mutual Laboratories, or Underwriters' Laboratories, Inc., or other testing laboratory approved by the state fire marshal, as providing adequate and reliable tests and examinations; and it shall be unlawful for any person to deliver or make available for use in the state of Minnesota any make, type or model of extinguisher which is not tested or serviced as required in the standards of the National Fire Protection Association entitled "Standards for the Installation, Maintenance and Use of Portable Fire Extinguishers" (NFPA No. 10) dated June 1959 adopted by the state fire marshal in accordance with the administrative procedure act.

Sec. 14. Minnesota Statutes 1980, Section 299F.391, Subdivision 1, is amended to read:

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Subdivision 1. **DEFINITIONS.** For purposes of this section the following definitions shall apply:

(a) "Lodging house" ~~shall mean~~ means any building or portion thereof containing not more than five guest rooms which are used or intended to be used for sleeping purposes by guests and where rent is paid in money, goods, labor or otherwise;

(b) "Hospital" ~~shall have~~ has the meaning given it in section 144.50;

(c) "Hotel" ~~shall mean~~ means any building or portion thereof containing six or more guest rooms intended or designed to be used, or which are used, rented, hired out to be occupied, or which are occupied for sleeping purposes by guests, and which is required to be licensed as a ~~hotel~~ pursuant to chapter 157;

(d) "Nursing home" ~~shall have~~ has the meaning given it in section 144A.01;

(e) "School" ~~shall mean~~ means any public or private school or educational institution.

Sec. 15. Minnesota Statutes 1980, Section 299F.46, Subdivision 1, is amended to read:

Subdivision 1. (1) It shall be the duty of the commissioner of public safety to inspect, or cause to be inspected, at least once ~~annually every three~~ years, every hotel in this state; and, for that purpose, he, or any of his ~~deputies~~, or designated alternates or agents shall have the right to enter or have access thereto at any reasonable hour; and, when, upon such inspection, it shall be found that the hotel so inspected does not conform to or is not being operated in accordance with the provisions of sections 157.01 to 157.14, ~~as amended~~, in so far as the same relate to fire prevention or fire protection of hotels, or the rules promulgated thereunder, or is being maintained or operated in such manner as to violate the uniform fire code promulgated pursuant to section 299F.011 or any other law of this state relating to fire prevention and fire protection of hotels, the commissioner and his deputies or designated alternates or agents shall report such a situation to the hotel inspector who shall proceed as provided for in sections 157.01 to 157.14.

(2) The word "hotel", as used in this subdivision, ~~shall have~~ has the meaning given in section 299F.391.

Sec. 16. **REPEALER.**

Minnesota Statutes 1980, Sections 299F.011, Subdivision 2; 299F.27; 299G.10; 299H.01; 299H.02; and 299H.28, Subdivision 1, are repealed.

Approved May 6, 1981

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