

CHAPTER 108—S.F.No. 79

An act relating to occupations and professions; generally revising and updating the laws relating to licensure of podiatrists; providing for definitions, licensing, practice without a license, disciplinary action, and investigations; providing penalties; amending Minnesota Statutes 1986, sections 153.01, subdivisions 2 and 3; 153.02; 153.03; 214.01; and 319A.02; proposing coding for new law in Minnesota Statutes, chapter 153; repealing Minnesota Statutes 1986, sections 153.01, subdivision 4; 153.04 to 153.09; 153.13; 153.14; and 153.15.

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

Section 1. Minnesota Statutes 1986, section 153.01, subdivision 2, is amended to read:

Subd. 2. **PODIATRY PODIATRIC MEDICINE.** ~~The word "Podiatry" is held to be~~ "Podiatric medicine" means the diagnosis or medical, mechanical, or surgical treatment of the ailments of the human hand or, foot, ankle, and the soft tissue of the lower leg distal to the tibial tuberosity, including amputation of the toe, but not including amputation of the foot, hand, or fingers, or the use of anesthetics other than local anesthetics. ~~It shall include~~ "Podiatric medicine" includes the fitting prescribing or recommending of appliances, devices, or shoes for the correction or relief of minor foot ailments; except the amputation of the foot, hand, toes, or fingers; or the use of anesthetics other than local. ~~It shall include~~ "Podiatric medicine" includes the prescribing or administering of any drugs or medications necessary or helpful to the practice of podiatry as defined by this subdivision, provided, however, that licensed podiatrists shall be restricted in their prescribing or administering of any drugs or medications by the limitations imposed on the scope of practice of podiatry podiatric medicine as defined in this chapter.

Sec. 2. Minnesota Statutes 1986, section 153.01, subdivision 3, is amended to read:

Subd. 3. **BOARD.** ~~The word "Board" means the board of~~ podiatry podiatric medicine of the state of Minnesota.

Sec. 3. Minnesota Statutes 1986, section 153.02, is amended to read:

153.02 BOARD; APPOINTMENT; TERMS; COMPENSATION OF PODIATRIC MEDICINE.

The governor shall appoint a board of podiatry podiatric medicine consisting of two public members as defined by section 214.02 and five resident podiatrists ~~of good standing in their profession.~~ The podiatrists must each hold a degree of doctor of podiatric medicine and be licensed to practice podiatric medicine under this chapter. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09. The provision of staff, administrative services and office space; the review and processing of

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complaints; the setting of board fees; and other provisions related to board operations shall be as provided in chapter 214 and Laws 1976, chapter 222, sections 2 to 7.

The board shall elect from among its members a president and a secretary-treasurer. The board may adopt rules as necessary to carry out the purposes of this chapter. The members of the board may administer oaths and take testimony as to matters pertaining to the duties of the board. Four members of the board shall constitute a quorum for the transaction of business. The board shall have a common seal, which shall be kept by the executive director.

Sec. 4. Minnesota Statutes 1986, section 153.03, is amended to read:

153.03 APPLICATION FOR REGISTRATION; EXPENSES.

~~Application for registration shall be made upon blanks furnished by the board and signed and sworn to by the applicant. The expenses of administering sections ~~153.04~~ 1 to ~~153.15~~ 16 shall be paid from the appropriations made to the board.~~

Sec. 5. [153.16] LICENSURE.

Subdivision 1. LICENSE REQUIREMENTS. The board shall issue a license to practice podiatric medicine to a person who meets the following requirements:

(a) The applicant for a license shall file a written notarized application on forms provided by the board, showing to the board's satisfaction that the applicant is of good moral character and satisfies the requirements of this section.

(b) The applicant shall present evidence satisfactory to the board of being a graduate of a podiatric medical school approved by the board based upon its faculty, curriculum, facilities, accreditation by a recognized national accrediting organization approved by the board, and other relevant factors.

(c) The applicant must have passed an examination prepared and graded by the national board of podiatric medical examiners and also pass a state clinical examination prepared and graded by the state board of podiatric medicine or a national clinical examination prepared and graded by the national board of podiatric medical examiners. The board shall by rule determine what score constitutes a passing score in each examination.

(d) Applicants graduating after 1986 from a podiatric medical school shall present evidence satisfactory to the board of the completion of (1) one year of graduate, clinical residency or preceptorship in a program accredited by a national accrediting organization approved by the board or (2) other graduate training that meets standards equivalent to those of an approved national accrediting organization or school of podiatric medicine.

(e) The applicant shall appear in person before the board or its designated

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representative to show that the applicant satisfies the requirements of this section. The board may establish as internal operating procedures the procedures or requirements for the applicant's personal presentation.

(f) The applicant shall pay a fee established by the board by rule. The fee shall not be refunded.

(g) The applicant must not have engaged in conduct warranting disciplinary action against a licensee. If the applicant does not satisfy the requirements of this paragraph, the board may refuse to issue a license unless it determines that the public will be protected through issuance of a license with conditions and limitations the board considers appropriate.

(h) Upon payment of a fee as the board may require, an applicant who fails to pass an examination and is refused a license is entitled to reexamination within one year of the board's refusal to issue the license. No more than two reexaminations are allowed without a new application for a license.

Subd. 2. APPLICANTS LICENSED IN ANOTHER STATE. The board shall issue a license to practice podiatric medicine to any person currently or formerly licensed to practice podiatric medicine in another state who satisfies the requirements of this section:

(a) The applicant shall satisfy the requirements established in subdivision 1.

(b) The applicant shall present evidence satisfactory to the board indicating the current status of a license to practice podiatric medicine issued by the proper agency in another state or country.

(c) The applicant must not have had a license revoked, engaged in conduct warranting disciplinary action against a licensee, or been subjected to disciplinary action, in another state. If an applicant does not satisfy the requirements of this paragraph, the board may refuse to issue a license unless it determines that the public will be protected through issuance of a license with conditions or limitations the board considers appropriate.

(d) The applicant shall submit with the license application the following additional information for the five-year period preceding the date of filing of the application: (1) the name and address of the applicant's professional liability insurer in the other state; and (2) the number, date, and disposition of any podiatric medical malpractice settlement or award made to the plaintiff relating to the quality of podiatric medical treatment.

Subd. 3. TEMPORARY PERMIT. Upon payment of a fee and in accordance with the rules of the board, the board may issue a temporary permit to practice podiatric medicine to a podiatrist engaged in a clinical residency or preceptorship for a period not to exceed 12 months.

Sec. 6. [153.17] PRACTICING WITHOUT LICENSE; PENALTY.

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

Subdivision 1. UNLAWFUL PRACTICE OF PODIATRIC MEDICINE. It is unlawful for any person not holding a valid license or permit issued in accordance with this chapter to practice podiatric medicine as defined in section 153.01, subdivision 2, in this state.

Subd. 2. PRACTICE OF PODIATRIC MEDICINE DEFINED. It is unlawful for any person not holding a valid license issued in accordance with this chapter to:

(1) advertise, hold out to the public, or represent in any manner that the person is authorized to practice podiatric medicine in this state;

(2) use in the conduct of any occupation or profession pertaining to the diagnosis or medical, mechanical, or surgical treatment of the ailments of the human hand, foot, ankle, or soft tissue of the lower leg distal to the tibial tuberosity, the designation "doctor of podiatric medicine," "podiatrist," "D.P.M.," "podiatric physician," "chiropodist," "foot specialist," or "foot doctor," or uses any title, degree, letter, syllable, word, or words that would tend to lead the public to believe that person was authorized to practice or assume duties incident to the practice of podiatric medicine.

Subd. 3. PENALTY. Any person violating the provisions of subdivision 1 or 2 is guilty of a gross misdemeanor.

Sec. 7. [153.18] EXEMPTIONS.

Section 6 does not apply to, control, prevent or restrict the practice, service, or activities of:

(1) a person who is a commissioned medical officer of, a member of, or employed by, the armed forces of the United States, the United States Public Health Service, the Veterans Administration, any federal institution or any federal agency while engaged in the performance of official duties within this state, if the person is licensed elsewhere;

(2) a person licensed by a health related licensing board, as defined in section 214.01, subdivision 2, or registered by the commissioner of health under section 214.13, if the person's professional activities are confined within the scope of the license;

(3) a Christian Scientist or other person who endeavors to prevent or cure disease or suffering exclusively by mental or spiritual means or by prayer.

Sec. 8. [153.19] GROUNDS FOR DISCIPLINARY ACTION.

Subdivision 1. GROUNDS LISTED. The board may refuse to grant a license or may impose disciplinary action as described in this section against any doctor of podiatric medicine. The following conduct is prohibited and is grounds for disciplinary action:

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(1) failure to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the board; the burden of proof shall be upon the applicant to demonstrate the qualifications or satisfaction of the requirements;

(2) obtaining a license by fraud or cheating, or attempting to subvert the licensing examination process.

(3) conviction, during the previous five years, of a felony reasonably related to the practice of podiatric medicine;

(4) revocation, suspension, restriction, limitation, or other disciplinary action against the person's podiatric medical license in another state or jurisdiction, failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction, or having been refused a license by any other state or jurisdiction;

(5) advertising that is false or misleading;

(6) violating a rule adopted by the board or an order of the board, a state, or federal law that relates to the practice of podiatric medicine, or in part regulates the practice of podiatric medicine, or a state or federal narcotics or controlled substance law;

(7) engaging in any unethical conduct; conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare or safety of a patient; or podiatric medical practice that is professionally incompetent, in that it may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established;

(8) failure to supervise a preceptor or resident;

(9) aiding or abetting an unlicensed person in the practice of podiatric medicine, except that it is not a violation of this clause for a podiatrist to employ, supervise, or delegate functions to a qualified person who may or may not be required to obtain a license or registration to provide health services if that person is practicing within the scope of that person's license or registration or delegated authority;

(10) adjudication as mentally incompetent, or mentally ill, or as a chemically dependent person, a person dangerous to the public, or a person who has a psychopathic personality by a court of competent jurisdiction, within or without this state;

(11) engaging in unprofessional conduct that includes any departure from or the failure to conform to the minimal standards of acceptable and prevailing podiatric medical practice, but actual injury to a patient need not be established;

(12) inability to practice podiatric medicine with reasonable skill and safety to patients by reason of illness or chemical dependency or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills;

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(13) revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law;

(14) improper management of medical records, including failure to maintain adequate medical records, to comply with a patient's request made under section 144.335 or to furnish a medical record or report required by law;

(15) accepting, paying, or promising to pay a part of a fee in exchange for patient referrals;

(16) engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(17) becoming addicted or habituated to a drug or intoxicant;

(18) prescribing a drug for other than medically accepted therapeutic or experimental or investigative purposes authorized by a state or federal agency;

(19) engaging in sexual conduct with a patient or conduct that may reasonably be interpreted by the patient as sexual, or in verbal behavior which is seductive or sexually demeaning to a patient;

(20) failure to make reports as required by section 13 or to cooperate with an investigation of the board as required by section 9.

Subd. 2. **EVIDENCE.** In disciplinary actions alleging a violation of subdivision 1, clause (3) or (4), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the same is admissible into evidence without further authentication and constitutes prima facie evidence of the contents of that judgment or proceeding.

Sec. 9. [153.20] **PODIATRIST COOPERATION.**

A podiatrist who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient medical records, as reasonably requested by the board, to assist the board in its investigation. The board shall pay for copies requested. If the board does not have a written consent from a patient permitting access to the patient's records, the podiatrist shall delete any data in the record that identifies the patient before providing it to the board. The board shall maintain any records obtained under this section as investigative data under chapter 13.

Sec. 10. [153.21] **MENTAL EXAMINATION; ACCESS TO MEDICAL DATA.**

Subdivision 1. SUBMISSION TO EXAMINATION. If the board has probable cause to believe that a doctor of podiatric medicine falls within the provisions of section 8, subdivision 1, clause (12), it may direct the doctor to

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submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, a doctor of podiatric medicine licensed under this chapter is considered to have consented to submit to a mental or physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground that the same constitute a privileged communication. Failure of a podiatrist to submit to an examination when directed constitutes an admission of the allegations against the podiatrist, unless the failure was due to circumstance beyond the podiatrist's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A podiatrist affected under this subdivision shall at reasonable intervals be given an opportunity to demonstrate that the podiatrist can resume the competent practice of podiatric medicine with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor the orders entered by the board shall be used against a podiatrist in any other proceeding.

Subd. 2. ACCESS TO MEDICAL DATA. In addition to ordering a physical or mental examination or chemical dependency evaluation, the board may, notwithstanding section 13.42, 144.651, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that a doctor of podiatric medicine falls within the provisions of section 8, subdivision 1, clause (12). The medical data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A provider, insurance company, or government agency shall comply with any written request of the board under this section and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request under this section, unless the information is false and the provider giving the information knew, or had reason to believe, the information was false.

Sec. 11. [153.22] FORMS OF DISCIPLINARY ACTION; DATES; AUTOMATIC SUSPENSION; REISSUANCE.

Subdivision 1. FORMS OF DISCIPLINARY ACTION. When the board finds, after notice and hearing, that a licensed doctor of podiatric medicine has violated a provision or provisions of this chapter, it may do one or more of the following:

- (1) revoke the license;
- (2) suspend the license;
- (3) impose limitations or conditions on the podiatrist's practice of podiatric medicine; the imposition of retraining or rehabilitation requirements; the requirement of practice under supervision; or the conditioning of continued practice on demonstration of knowledge or skills by appropriate examination or other review of skill and competence;

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(4) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the podiatrist of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding;

(5) order the podiatrist to provide unremunerated professional service under supervision at a designated public hospital, nursing home, clinic, or other health care institution; or

(6) censure or reprimand the licensed podiatrist.

Subd. 2. TEMPORARY SUSPENSION OF LICENSE. In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend the license of a doctor of podiatric medicine if the board finds that the doctor has violated a statute or rule that the board is empowered to enforce and continued practice by the doctor would create a serious risk of harm to the public. The suspension is effective upon written notice to the doctor, specifying the statute or rule violated. The suspension remains in effect until the board issues a final order in the matter after a hearing. At the time it issues the suspension notice, the board shall schedule a disciplinary hearing to be held under the contested case procedure of the administrative procedure act. The doctor must be provided with at least 20 days notice of any hearing held under this subdivision. The hearing must be scheduled to begin no later than 30 days after the issuance of the suspension order.

Subd. 3. EFFECTIVE DATES. A suspension, revocation, condition, limitation, qualification or restriction of a license is in effect pending determination of an appeal unless the court, upon petition and for good cause shown, otherwise orders.

Subd. 4. AUTOMATIC SUSPENSION. A license to practice podiatric medicine is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a probate court under sections 525.54 to 525.612, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a probate court under chapter 253B or sections 526.09 to 526.11. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

Subd. 5. CONDITIONS ON REISSUED LICENSE. In its discretion, the board may restore and reissue a license to practice podiatric medicine, but as a condition of the license may impose any disciplinary or corrective measure that it might originally have imposed.

Sec. 12. [153.23] DISCIPLINARY INVESTIGATION.

Subdivision 1. MALPRACTICE COMPLAINTS. Whenever the files maintained by the board show that a podiatric medical malpractice settlement or award to the plaintiff has been made against a podiatrist as reported by insurers, the executive director may initiate a complaint under section 214.10.

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Subd. 2. ACCESS TO HOSPITAL RECORDS. The board has access to hospital and medical records of a patient treated by the podiatrist under review if the patient signs a written consent permitting that access. If no consent form has been signed, the hospital or podiatrist shall first delete data in the record that identifies the patient before providing it to the board.

Sec. 13. [153.24] REPORTING OBLIGATIONS.

Subdivision 1. PERMISSION TO REPORT. A person who has knowledge of any conduct constituting grounds for discipline under this chapter may report the violation to the board.

Subd. 2. INSTITUTIONS. Any hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the institution or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition a podiatrist's privilege to practice or treat patients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action. The institution or organization shall also report the resignation of any podiatrists before the conclusion of any disciplinary proceeding, or prior to the commencement of formal charges but after the podiatrist had knowledge that formal charges were contemplated or in preparation. No report is required of a podiatrist voluntarily limiting his or her practice at a hospital if the podiatrist notifies all hospitals at which the podiatrist has privileges of the voluntary limitation and the reasons for it.

Subd. 3. LICENSED PROFESSIONALS. A licensed health professional shall report to the board personal knowledge of any conduct that the professional reasonably believes constitutes grounds for disciplinary action under this chapter by any podiatrist, including any conduct showing that the podiatrist may be medically incompetent, or may have engaged in unprofessional conduct or may be medically or physically unable to engage safely in the practice of podiatric medicine.

Subd. 4. INSURERS. Four times a year as prescribed by the board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to podiatrists shall submit to the board a report concerning the podiatrists against whom podiatric medical malpractice settlements or awards have been made to the plaintiff. The report must contain at least the following information:

(1) the total number of podiatric malpractice settlements or awards made to the plaintiff;

(2) the date the podiatric malpractice settlements or awards to the plaintiff were made;

(3) the allegations contained in the claim or complaint leading to the settlements or awards made to the plaintiff;

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(4) the dollar amount of each podiatric malpractice settlement or award;

(5) the regular address of the practice of the podiatrist against whom an award was made or with whom a settlement was made; and

(6) the name of the podiatrist against whom an award was made or with whom a settlement was made.

The insurance company shall, in addition to the foregoing information, report to the board any information it has that tends to substantiate a charge that a podiatrist may have engaged in conduct violating this chapter.

Subd. 5. COURTS. The court administrators of the district courts or any other court of competent jurisdiction shall report to the board any judgment or other determination of the court that adjudges or includes a finding that a podiatrist is mentally ill, mentally incompetent, guilty of a felony, or guilty of a violation of federal or state narcotics laws or controlled substances act, guilty of an abuse or fraud under Medicare or Medicaid, appoints a guardian of the podiatrist under sections 525.54 to 525.61 or commits a podiatrist under chapter 253B or sections 526.09 to 526.11.

Subd. 6. SELF-REPORTING. A podiatrist shall report to the board any personal action that would require that a report be filed with the board by any person, health care facility, business, or organization under subdivisions 2 to 5.

Subd. 7. DEADLINES; FORMS. Reports required by subdivisions 2 to 6 must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Sec. 14. [153.25] IMMUNITY.

Subdivision 1. REPORTING. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report to the board under section 13 or for otherwise reporting to the board violations or alleged violations of section 8.

Subd. 2. INVESTIGATION. Members of the board and persons employed by the board or engaged in the investigation of violations and in the preparation and management of charges of violations of this chapter on behalf of the board are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.

Sec. 15. Minnesota Statutes 1986, section 214.01, subdivision 2, is amended to read:

Subd. 2. "Health-related licensing board" means the board of examiners of

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nursing home administrators established pursuant to section 144A.19, the board of medical examiners created pursuant to section 147.01, the board of nursing created pursuant to section 148.181, the board of chiropractic examiners established pursuant to section 148.02, the board of optometry established pursuant to section 148.52, the board of psychology established pursuant to section 148.90, the board of dentistry established pursuant to section 150A.02, the board of pharmacy established pursuant to section 151.02, the board of ~~podiatry~~ podiatric medicine established pursuant to section 153.02, and the board of veterinary medicine, established pursuant to section 156.01.

Sec. 16. Minnesota Statutes 1986, section 319A.02, subdivision 2, is amended to read:

Subd. 2. "Professional service" means personal service rendered by a professional pursuant to a license or certificate issued by the state of Minnesota to practice medicine and surgery pursuant to sections 147.01 to 147.29, chiropractic pursuant to sections 148.01 to 148.101, nursing pursuant to sections 148.171 to 148.285, optometry pursuant to sections 148.52 to 148.62, psychology pursuant to sections 148.88 to 148.98, dentistry pursuant to sections 150A.01 to 150A.12, pharmacy pursuant to sections 151.01 to 151.40, ~~podiatry~~ podiatric medicine pursuant to sections ~~153.01~~ 1 to ~~153.15~~ 16, veterinary medicine pursuant to sections 156.001 to 156.14, architecture, engineering, surveying and landscape architecture pursuant to sections 326.02 to 326.15, accountancy pursuant to sections 326.17 to 326.23, or law pursuant to sections 481.01 to 481.17, or pursuant to a license or certificate issued by another state pursuant to similar laws.

Sec. 17. **REPEALER.**

Minnesota Statutes 1986, sections 153.01, subdivision 4; 153.04; 153.05; 153.06; 153.07; 153.08; 153.09; 153.13; 153.14; and 153.15, are repealed.

Approved May 14, 1987

CHAPTER 109—S.F.No. 461

An act relating to natural resources; changing certain provisions relating to the sale of state timber; eliminating laws relating to white pine blister rust control and cutting notices; amending Minnesota Statutes 1986, sections 88.49, subdivisions 5, 9, and 11; 90.031, subdivision 3; 90.041, subdivision 2; 90.101, subdivision 1; 90.14; 90.151, subdivisions 1 and 13; 90.161, subdivision 1; 90.173; and 97A.205; repealing Minnesota Statutes 1986, sections 18.431 to 18.436 and 88.13.

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

Section 1. Minnesota Statutes 1986, section 88.49, subdivision 5, is amended to read:

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