

Sec. 3. EFFECTIVE DATE.

Sections 1 and 2 are effective August 1, 1988, and apply to crimes committed on or after that date.

Approved April 14, 1988

CHAPTER 530—S.F.No. 1328

An act relating to public safety; altering certain requirements concerning fencing of unused mine pits and shafts; providing modification to certain public and private liability laws; providing penalties; amending Minnesota Statutes 1986, sections 3.732, subdivision 1; 3.736, subdivision 3; 87.024; 180.01; 180.03, subdivisions 2 and 3; 180.06; 180.10; 466.03, subdivisions 6c and 13.

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

Section 1. Minnesota Statutes 1986, section 3.732, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** As used in this section and section 3.736 the terms defined in this section have the meanings given them.

(1) "State" includes each of the departments, boards, agencies, commissions, courts, and officers in the executive, legislative, and judicial branches of the state of Minnesota and includes but is not limited to the Minnesota housing finance agency, the Minnesota higher education coordinating board, the Minnesota higher education facilities authority, the armory building commission, the Minnesota zoological board, the iron range resources and rehabilitation board, the University of Minnesota, state universities, community colleges, state hospitals, and state penal institutions. It does not include a city, town, county, school district, or other local governmental body corporate and politic.

(2) "Employee of the state" means all present or former officers, members, directors or employees of the state, members of the Minnesota national guard, or persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation, but does not include either an independent contractor or members of the Minnesota national guard while engaged in training or duty under United States Code, title 10, or United States Code, title 32, section 316, 502, 503, 504, or 505, as amended through December 31, 1983.

(3) "Scope of office or employment" means that the employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned by competent authority.

Sec. 2. Minnesota Statutes 1986, section 3.736, subdivision 3, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

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 rule;

(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 public sidewalk that does not abut a publicly-owned building or a publicly-owned parking lot, 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, state land that contains idled or abandoned mine pits or shafts, 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 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, or from the construction, operation, or maintenance of a water access site created by the iron range resources and rehabilitation board, except that the state is liable for conduct that would entitle a trespasser to damages against a private person. For the purposes of this clause, a water access site, as defined in section 86A.04 or created by the iron range resources and rehabilitation board, that provides access to an idled, water filled mine pit, also includes the entire water filled area of the pit and, further, includes losses caused by the caving or slumping of the mine pit walls;

(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

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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. 3. Minnesota Statutes 1986, section 87.024, is amended to read:

87.024 LIABILITY; LEASED LAND, WATER FILLED MINE PITS.

Unless otherwise agreed in writing, the provisions of sections 87.022 and 87.023 shall be deemed applicable to the duties and liability of an owner of the following described land: (1) land leased to the state or any subdivision thereof for recreational purposes; or (2) idled or abandoned, water filled, mine pits whose pit walls may slump or cave, and to which water the public has access from a water access site operated by a public entity.

Sec. 4. Minnesota Statutes 1986, section 180.01, is amended to read:

180.01 APPOINTMENT.

The board of commissioners of any county in this state, where there are at least five mines situate and in operation, is hereby authorized and directed, on or before the first day of July, 1905, to appoint an inspector of mines, who shall hold office for the term of three years or until a successor is appointed and qualified, and in addition thereto may appoint one assistant inspector for every 20 mines as the board may determine for the purpose of discharging the duties hereinafter prescribed; to fix the compensation and traveling expenses of such inspector or any assistant inspector and provide for the payment of the same, and to remove such inspector or any assistant inspector and appoint another in place when in the judgment of the board the best interests of the owners and employees of such mines may so require. In any county where there are active, inactive, or idled mines, and no county mine inspector has been appointed as provided above, the county board shall enforce the provisions of chapter 180 by designating an appropriate county officer or employee to discharge the duties of county mine inspector. The qualifications and salary prescribed in section 180.02 do not apply to the person designated, except that the person may not be interested in any mine as an owner, operator, agent, stockholder, or engineer. Acts or omissions of a person appointed or designated to perform the duties of county mine inspector, whether statutory or discretionary, are acts or omissions as defined in section 466.03, subdivision 5 or 6.

Sec. 5. Minnesota Statutes 1986, section 180.03, subdivision 2, is amended to read:

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Subd. 2. Every person, firm or corporation that is or has been engaged in the business of mining or removing iron ore, taconite, semitaconite or other minerals except sand, crushed rock and gravel by the open pit method in any county which has appointed an inspector of mines pursuant to section 180.01 shall erect and maintain, as a minimum, a three strand wire fence, barrier, appropriate signs, or combination of them, as directed by the inspector, along the outside perimeter of the excavation, open pit, or shaft of any mine in which mining operations have ceased for a period of six consecutive months or longer. However, in residential and developed areas, along major roads, and in areas of hazardous conditions, the following described fencing must be erected, unless exempted by based upon local site conditions that may exist at shafts, caves, or open pits, the county mine inspector may require more secure fencing such as barbed wire or mesh fence, or may require barriers, appropriate signs, or any combination of the above, to reduce the possibility of accidental falls. The county mine inspector may grant exemptions under subdivision 4. This fencing must consist of two-inch by four-inch mesh fencing; the top and bottom wire shall not be less than nine gauge and the filler wire shall not be less than 11 gauge; the fencing shall be not less than five feet in height with two strands of barbed wire six inches apart affixed to the top of the fence; and the fence posts shall be no more than ten feet apart. In the case of open pit mines in which mining operations cease after November 1, 1979, and before March 1, 1980, the fence, barrier, signs, or combination of them shall be erected as soon as possible after March 1, 1980. Where mining operations cease on or after March 1, 1980, the fence, barrier, signs, or combination of them shall be erected forthwith. In the case of open pit mines in which mining operations had ceased for a period of six consecutive months or longer before November 1, 1979, and not resumed, the fence, barrier, signs, or combination of them shall be erected within two years from the current date when the county mine inspector directs the erection of fences, barriers, signs, or combination of them. Any fence, barrier, signs, or combination of them, required by an inspector of mines pursuant to subdivision 3 or other applicable law, shall meet the standards of this section as a minimum. This subdivision does not apply to any excavation, open pit, or shaft, or any portion thereof, exempted from its application by the commissioner of natural resources pursuant to laws relating to mineland reclamation, exempted from its application by the iron range resources and rehabilitation board under actions taken by the board, or exempted from its application by the county mine inspector pursuant to subdivision 4.

Sec. 6. Minnesota Statutes 1986, section 180.03, subdivision 3, is amended to read:

Subd. 3. When any mine is idle or abandoned it shall be the duty of the inspector of mines to notify the person, firm, or corporation that is or has been engaged in the business of mining to erect and maintain around all the shafts, caves, and open pits of such mines a fence, barrier, appropriate signs, or combination of them, suitable to prevent persons or domestic animals from warn of the presence of shafts, caves, or open pits and reduce the possibility of accidentally falling into these shafts, caves or open pits. If the mine has been idled or

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abandoned for more than ten years, or if the person, firm or corporation that has been engaged in the business of mining no longer exists, the fee owner shall erect the fence, barrier, or signs required by this section. The notice shall be in writing and be served upon such person, firm, corporation or fee owner by certified mail.

Sec. 7. Minnesota Statutes 1986, section 180.06, is amended to read:

180.06 SALARY AND EXPENSES.

The salary and expenses of the inspector of mines shall be paid out of the treasury of the county for which appointed by vouchers similar to those used by The county for which the inspector of mines was appointed shall pay the inspector's salary and expenses out of its treasury in the manner provided for payment of salaries and expenses of other county officials. The board of county commissioners shall furnish the inspector of mines with necessary books, stationery, and supplies. At the request of the county mine inspector, the county board may appropriate money, including money appropriated to the county by the legislature for the purposes of mine safety or inspection for the expenses of the county mine inspector including expenses that arise from the erection and maintenance, by the county, on county administered land, of fences, barriers, or signs required by chapter 180.

Sec. 8. Minnesota Statutes 1986, section 180.10, is amended to read:

180.10 REMOVAL OF FENCE; GUARD.

Any worker, employee, or other person who shall open, remove, or disturb any fence, guard, barrier, sign, or rail and not close or replace or have the same closed or replaced again around or in front of any shaft, ~~test~~ pit, chute, excavation, cave, or land liable to cave, injure, or destroy, whereby accident, injury, or damage results, either to the mine or those at work therein, or to any other person, shall be guilty of a misdemeanor. A worker, employee, or other person who, in regard to any fence, guard, barrier, sign, or rail, does any of the acts prohibited by section 609.52, commits theft of the fence, guard, barrier, sign, or rail may be sentenced as provided in section 609.52.

Sec. 9. Minnesota Statutes 1986, section 466.03, subdivision 6c, is amended to read:

Subd. 6c. **WATER ACCESS SITES.** Any claim based upon the construction, operation, or maintenance by a municipality of a water access site created by the iron range resources and rehabilitation board. A water access site under this subdivision that provides access to an idled, water filled mine pit also includes the entire water filled area of the pit, and, further, claims related to a mine pit water access site under this subdivision include those based upon the caving or slumping of mine pit walls.

Sec. 10. Minnesota Statutes 1986, section 466.03, subdivision 13, is amended to read:

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Subd. 13. Any claim for a loss caused by the condition of unimproved real property owned by a municipality, which means land that the municipality has not improved, land that is owned or administered by the municipality that contains idled or abandoned mine pits or shafts, and appurtenances, fixtures and attachments to land that the municipality has neither affixed nor improved.

Approved April 14, 1988

CHAPTER 531—S.F.No. 1561

An act relating to game and fish; prohibiting the use of certain meat in baiting bears; amending Minnesota Statutes 1986, section 97B.425.

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

Section 1. Minnesota Statutes 1986, section 97B.425, is amended to read:

97B.425 BAITING BEARS.

A person placing bait to take bear must display a tag at each site where bait is placed and register the sites. The commissioner shall prescribe the method of tagging and registering the sites. ~~A person may not use solid waste containing bottles, cans, plastic, paper, metal, or other materials that are not readily biodegradable as a bait to attract bear.~~ To attract bear a person may not use a bait with:

- (1) meat from mammals, if the meat contains bones;
- (2) bones of mammals;
- (3) solid waste containing bottles, cans, plastic, paper, or metal;
- (4) materials that are not readily biodegradable; or
- (5) any part of a swine.

Approved April 14, 1988

CHAPTER 532—S.F.No. 1620

An act relating to human services; regulating payments for certain services for adults with mental retardation and related conditions; providing protection for the mentally retarded; providing for therapeutic work activities; negotiating medical assistance utilization review appeals; regulating child support; amending Minnesota Statutes 1986, section 246.56; Min-

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