

Presented to the governor May 24, 2005

Signed by the governor May 27, 2005, 2:50 p.m.

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### CHAPTER 104—H.F.No. 419

*An act relating to game and fish; modifying protection status of great horned owls; amending Minnesota Statutes 2004, sections 97A.015, subdivision 52; 97B.701, by adding a subdivision.*

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

Section 1. Minnesota Statutes 2004, section 97A.015, subdivision 52, is amended to read:

Subd. 52. **UNPROTECTED BIRDS.** "Unprotected birds" means English sparrow, blackbird, starling, magpie, cormorant, common pigeon, chukar partridge, quail other than bob-white quail, and mute swan, and great horned owl.

Sec. 2. Minnesota Statutes 2004, section 97B.701, is amended by adding a subdivision to read:

Subd. 4. **GREAT HORNED OWL.** A person who is authorized to take a great horned owl under a federal permit does not need a state permit to take a great horned owl.

Presented to the governor May 24, 2005

Signed by the governor May 27, 2005, 2:40 p.m.

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### CHAPTER 105—S.F.No. 1908

*An act relating to natural resources; establishing the Shooting Range Protection Act; requiring expedited rulemaking; proposing coding for new law as Minnesota Statutes, chapter 87A.*

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

Section 1. **[87A.01] DEFINITIONS.**

Subdivision 1. **APPLICABILITY.** The definitions in this section apply to sections 87A.01 to 87A.08.

Subd. 2. **PERSON.** "Person" means an individual, association, proprietorship, partnership, corporation, club, political subdivision, or other legal entity.

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Subd. 3. SHOOTING RANGE OR RANGE. "Shooting range" or "range" means an area or facility designated or operated primarily for the use of firearms, as defined in section 97A.015, subdivision 19, or archery, and includes shooting preserves as described in section 97A.115 or any other Minnesota law.

Subd. 4. SHOOTING RANGE PERFORMANCE STANDARDS. "Shooting range performance standards" means those rules adopted by the commissioner of natural resources under section 87A.02 for the safe operation of shooting ranges.

Subd. 5. LOCAL UNIT OF GOVERNMENT. "Local unit of government" means a home rule charter or statutory city, county, town, or other political subdivision.

## **Sec. 2. [87A.02] SHOOTING RANGE PERFORMANCE STANDARDS.**

Subdivision 1. ADOPTION OF STANDARDS; REVIEW. (a) The commissioner of natural resources must develop and adopt shooting range performance standards, according to the expedited rulemaking process under section 14.389. The shooting range performance standards must provide for compliance with applicable noise standards under section 87A.05 and for the safe use of shooting ranges within their boundaries, including the containment of projectiles.

(b) The shooting range performance standards must provide for the operation of shooting preserves within the boundaries of the preserve, including an exemption from any discharge distance limitations generally applicable to hunting on other land, when the shooting preserve is in compliance with all other applicable laws and is in operation on or before the effective date of the performance standards adopted under this section or prior to the development of any structure that would cause the preserve to be out of compliance with the discharge distance.

(c) The commissioner must review the shooting range performance standards at least once every five years and revise them if necessary for the safe operation of shooting ranges.

(d) In the adoption of any amendments to the shooting range performance standards adopted under paragraph (a), the commissioner shall follow all notice and public hearing requirements for the regular rule adoption process under sections 14.001 to 14.28.

Subd. 2. INTERIM STANDARDS. Until the commissioner of natural resources adopts the shooting range performance standards under subdivision 1, paragraph (a), the November 1999 revised edition of the National Rifle Association's Range Source Book: A Guide to Planning and Construction shall serve as the interim shooting range performance standards, having the full effect of the shooting range performance standards for purposes of this chapter. The interim shooting range performance standards sunset and have no further effect under this chapter upon the effective date of the shooting range performance standards adopted under subdivision 1, paragraph (a).

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**Sec. 3. [87A.03] COMPLIANT RANGES; AUTHORIZED ACTIVITIES.**

Subdivision 1. AUTHORIZED ACTIVITIES. A shooting range that operates in compliance with the shooting range performance standards must be permitted to do all of the following within its geographic boundaries, under the same or different ownership or occupancy, if done in accordance with shooting range performance standards:

- (1) operate the range and conduct activities involving the discharge of firearms;
- (2) expand or increase its membership or opportunities for public participation related to the primary activity as a shooting range;
- (3) make those repairs or improvements desirable to meet or exceed requirements of shooting range performance standards;
- (4) increase events and activities related to the primary activity as a shooting range;
- (5) conduct shooting activities and discharge firearms daily between 7:00 a.m. and 10:00 p.m. A local unit of government with zoning jurisdiction over a shooting range may extend the hours of operation by the issuance of a special or conditional use permit; and
- (6) acquire additional lands to be used for buffer zones or noise mitigation efforts or to otherwise comply with this chapter.

Subd. 2. NONCONFORMING USE. A shooting range that is a nonconforming use shall be allowed to conduct additional shooting activities within the range's lawful property boundaries as of the date the range became a nonconforming use, provided the shooting range remains in compliance with noise and shooting range performance standards under this chapter.

Subd. 3. COMPLIANCE WITH OTHER LAW. Nothing in this section exempts any newly constructed or remodeled building on a shooting range from compliance with fire safety, handicapped accessibility, elevator safety, bleacher safety, or other provisions of the State Building Code that have mandatory statewide application.

**Sec. 4. [87A.04] MITIGATION AREA.**

(a) Except for those uses, developments, and structures in existence or for which approval has been granted by October 1, 2005, or as provided in paragraph (b), no change in use, new development, or construction of a structure shall be approved for any portion of property within 750 feet of the perimeter property line of an outdoor shooting range if the change in use, development, or construction would cause an outdoor shooting range in compliance with this chapter to become out of compliance.

(b) A change in use, new development, or construction of a structure subject to this section may be approved if the person seeking the approval or, at the discretion of the governing body, the approving authority agrees to provide any mitigation required to keep the range in compliance with this chapter. The person requesting an approval subject to this section is responsible for providing documentation if no mitigation is

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required under this section. Failure to provide the documentation or any mitigation required under this section exempts the range from being found out of compliance with the shooting range performance and noise standards of this chapter with regard to the property responsible for the mitigation if the failure to provide the documentation or required mitigation is the sole basis for the range being out of compliance with the shooting range performance standards. Any action brought by the owner of the property against the range is subject to section 87A.06. With the permission of the range operator, any mitigation required under this section may be provided on the range property.

#### Sec. 5. [87A.05] NOISE STANDARDS.

Allowable noise levels for the operation of a shooting range are the levels determined by replacing the steady state noise L10 and L50 state standards for each period of time within each noise area's classification with a single Leq(h) standard for impulsive noise that is two dBA lower than that of the L10 level for steady state noise. The noise level shall be measured outside of the range property at the location of the receiver's activity according to Minnesota Rules, parts 7030.0010 to 7030.0080, as in effect on the effective date of this act. For purposes of this section, "Leq(h)" means the energy level that is equivalent to a steady state level that contains the same amount of sound energy as the time varying sound level for a 60-minute time period.

#### Sec. 6. [87A.06] NUISANCE ACTIONS; COMPLIANCE WITH SHOOTING RANGE PERFORMANCE STANDARDS.

A person who owns, operates, or uses a shooting range in this state that is in compliance with shooting range performance standards is not subject to any nuisance action for damages or equitable relief based on noise or other matters regulated by the shooting range performance standards. This section does not prohibit other actions.

#### Sec. 7. [87A.07] CLOSURE OF SHOOTING RANGES.

Subdivision 1. CLOSURE. Except as otherwise provided in sections 87A.01 to 87A.08, a shooting range that is in compliance with shooting range performance standards and the requirements of sections 87A.01 to 87A.08 shall not be forced to permanently close or permanently cease any activity related to the primary use of the shooting range unless the range or activity is found to be a clear and immediate safety hazard by a court of competent jurisdiction. In any action brought to compel the permanent closure of any range in compliance with shooting range performance standards and this chapter, or to permanently cease any activity related to the primary use of the shooting range, there is a rebuttable presumption that the range or activity is not a clear and immediate safety hazard. If the shooting range provides evidence that the cause of a proven safety hazard can be mitigated so as to eliminate the safety hazard, the court shall not order the permanent closure of the range, or permanent ceasing of the activity found to be a clear and immediate safety hazard, unless the range operator fails to implement the necessary mitigation to remove the safety hazard by the date that is determined reasonable by the court.

Subd. 2. PRELIMINARY INJUNCTIONS. Nothing in this section prohibits a court from granting a preliminary injunction against any activity determined to be a

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probable clear and immediate safety hazard, or against any individual determined to be the probable cause of an alleged clear and immediate safety hazard, pending the final determination of the existence of the safety hazard.

Subd. 3. PERMANENT INJUNCTIONS. A court may grant a permanent injunction only against a particular activity or person instead of permanently closing the range unless the court finds that the remaining operations also pose a safety hazard under this section.

**Sec. 8. [87A.08] APPLICABILITY OF OTHER LAWS.**

Subdivision 1. PUBLIC SAFETY LAWS; ZONING. (a) Nothing in this chapter prohibits enforcement of any federal law. To the extent consistent with this chapter, other state laws regarding the health, safety, and welfare of the public may be enforced. To the extent consistent with this chapter, a local unit of government with zoning authority jurisdiction over a shooting range may enforce its applicable ordinances and permits. Nothing in this chapter shall supersede more restrictive regulation of days and hours of operation imposed by the terms and conditions of ordinances and permits that are in effect on the effective date of this section.

(b) If the operator of the shooting range shows evidence that the range can be brought into compliance with the applicable state law, local ordinance, or permit, the range may not be permanently closed unless the range operator fails to bring the range into compliance with the applicable law, ordinance, or permit under this section by the date that the court determines reasonable. Nothing in this section prohibits a court from granting a preliminary injunction against any activity determined to be a violation of a law, ordinance, or permit under this section or against any individual determined to be causing an alleged violation, pending the final determination of the existence of the violation.

Subd. 2. PERMANENT INJUNCTIONS. A court may grant a permanent injunction only against a particular activity or person instead of permanently closing the range unless the court finds that the remaining operations also create a violation under this section.

**Sec. 9. EFFECTIVE DATE.**

Sections 1 to 8 are effective the day following final enactment.

Presented to the governor May 24, 2005

Signed by the governor May 27, 2005, 4:50 p.m.

**CHAPTER 106—S.F.No. 1579**

*An act relating to health; modifying the Health Care Administrative Simplification Act of 1994; modifying requirements of federal Drug Enforcement Administration registration numbers;*

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