

Amendments³⁸ to the United States Constitution. Respondents contend that their right to associate includes the right not to associate with others -- namely, those carrying guns. *See* Complaint, A-22 to A-31. The district court agreed, stating that the 2005 Act forces Respondents "to associate with those who carry firearms on their property." A-18. The district court's decision is contrary to controlling law and precedent and should be reversed.

A. Freedom Of Association Is A Derivative Right That Is No Greater Than The Constitutional Rights Upon Which It Is Based.

The United States Supreme Court has recognized two distinct types of "freedom of association." *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984). In the first line of decisions, the Supreme Court has held that "choices to enter into and maintain certain intimate human relationships" must be protected "as a fundamental element of personal liberty." *Id.* In the second line of cases, the Court has found "a right to associate for the purpose of engaging in those activities protected by the First Amendment -- speech, assembly, petition for the redress of grievances, and the exercise of religion." *Id.* Respondents' First Amendment claim pertains to the right discussed in the second line of cases.

As a derivative right, the right to association is not entitled to receive greater protection than the right from which it was derived. *Salvation Army v. Dep't of Comty. Affairs of N.J.*, 919 F.2d 183, 199 (3d Cir. 1990); *Schul v. Sherard*, 102 F. Supp. 2d 877,

³⁸ The First Amendment applies to the states by virtue of the Fourteenth Amendment. *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940).

888 (S.D. Ohio 2000); *Hrynda v. United States*, 933 F. Supp. 1047, 1054 (M.D. Fla. 1996). Thus, the extent of Respondents' right of association depends upon an underlying First Amendment right. In this case, there is no underlying First Amendment right supporting Respondents' claim. First, the 2005 Act does not, contrary to the district court's statement (*see* A-18), force Respondents to "associate with those who carry firearms on their property." Second, the alternative notification options in Minn. Stat. § 624.714, subd. 17(b) (2006) do not involve protected First Amendment rights governing expressive speech.

B. Respondents' Right To Freedom Of Association Is Not Violated By The Mere Presence On Their Property Of Individuals Who Wish To Carry Firearms.

Respondents contended, and the district court agreed,³⁹ that because the 2005 Act does not allow them to ban firearms in leased spaces or parking areas, Respondents are forced to associate with people who wish to carry firearms and that, under the principles announced in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), such forced association violates their right to freedom of association. Under principles announced in *Rumsfeld, Academic and Institutional Rights, Inc.*, ___ U.S. ___, 126 S. Ct. 1297 (2006), this free association claim has no merit and must be rejected.

In *Rumsfeld*, an association of law schools and law school faculties, known as "FAIR," brought First Amendment and freedom-of-association challenges to the constitutionality of the Solomon Amendment, a law that denies federal funds to

³⁹ *See* A-27 to A-28 (Complaint) and A-18 (district court opinion).

educational institutions if they deny military recruiters access to their institutions. FAIR had adopted policies expressing opposition to discrimination based on sexual orientation, including Congress' policy regarding homosexuals in the military. FAIR argued that the law unconstitutionally forced them to "associate" with military recruiters on campus, which in turn impaired FAIR's expression by suggesting that FAIR agrees with the discriminatory policy followed by the military. *See* 126 S. Ct. at 1312. In an unanimous opinion, the United States Supreme Court rejected FAIR's freedom-of-association claim. After noting that the military recruiters are "outsiders" who are not trying to become members of FAIR, the Court stated:

The Solomon Amendment has no similar effect [to the law struck down in *Dale*] on a law school's associational rights. Students and faculty *are free to associate to voice their disapproval of the military's message*; nothing about the statute affects the composition of the group by making group membership less desirable. . . . *A military recruiter's mere presence on campus does not violate a law school's right to associate, regardless of how repugnant the law school considers the recruiter's message.*

126 S. Ct. at 1312-13 (emphasis added).

Rumsfeld makes it clear that the right of free association is not so broad as to protect individuals from being in the presence of people who hold ideas with which they disagree or find repugnant. The 2005 Act does nothing to affect the composition of the religious organizations or to hamper their right to associate for the purpose of practicing their religion. As in *Rumsfeld*, they object to the "mere presence" on their property of people who possess a firearm. Respondents remain free to voice their disapproval of firearms possession in whatever manner they may choose. Thus, the 2005 Act does not abridge any right protected by the First Amendment.

The district court acknowledged that the 2005 Act does not *require* Respondents to accept as members (i.e., associate with) anyone whom it does not wish to accept. Thus, the 2005 Act also does not violate Respondents' freedom of association with respect to membership.⁴⁰ See A-18. The district court, however, incorrectly suggested that the 2005 Act forces Respondents to hire employees and rent space to tenants whose religious views are inconsistent with Respondents' religious beliefs. The district court stated: "[A] religious organization must be free to not employ, lease to, or otherwise associate with, those who would interfere with a principle of their faith." A-18. This suggestion has no basis whatsoever in the language of the 2005 Act. The Act itself merely indicates an "employer" and a "landlord" may not restrict "the lawful carry or possession of firearms" by employees and by tenants and their guests in certain locations. See Minn. Stat. § 624.714, subs. 17(e) and 18(c) (2006). Thus, the 2005 Act does not force unwanted employment⁴¹ or tenancy relationships upon Respondents.

⁴⁰ See *Roberts v. United States Jaycees*, in which the United States Supreme Court held that the Minnesota Human Rights Act required the Jaycees to admit women as full members, but noted that the Act "imposes no restrictions on the organization's ability to exclude individuals with ideologies or philosophies different from those of its existing members." 468 U.S. at 627

⁴¹ With the possible exception of employees whose duties are substantially religious in nature (e.g., clergy), there is no First Amendment right of association between Respondents and their employees. In *Fort Wayne Patrolmen's Benevolent Ass'n, Inc. v. City of Fort Wayne*, 625 F. Supp. 722 (N.D. Ind. 1986), the court rejected a freedom of association challenge to a city policy restricting outside employment of police officers, stating: "The court seriously doubts that the first amendment right to freedom of association is designed to protect employer-employee relationships; if it did every firing of an at will employee, every breach or tortuous interference with an employment contract, and every aspect of employer-employee relations would have constitutional (Footnote Continued on Next Page)

C. The Alternative Notification Options In Minn. Stat. § 624.714, Subd. 17(b) Do Not Involve Protected First Amendment Rights Governing Expressive Speech.

As discussed above, the 2005 Act provides two options for a private establishment to notify gun carriers that guns are banned on the premises: either by a sign or by personal notification. Contrary to Respondents' assertion, these alternative notice provisions do not violate Respondents' First Amendment rights.⁴²

First Amendment rights to freedom of speech are violated if a law compels the speaker to make direct affirmations of agreement with governmental positions, especially ideological positions.⁴³ Laws are significantly more likely to be closely scrutinized and declared unconstitutional if they compel speech on the basis of content or viewpoint, or compel speech diametrically opposed to the interests or views of the speaker.⁴⁴ On the

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dimensions, and no court has adopted such a proposition." *Id.* at 728. *Accord Swank v. Smart*, 898 F.2d 1247, 1252 (7th Cir.) (noting "the Constitution is not an employment manual" in rejecting plaintiff employee's claim of freedom of association), *cert. denied*, 498 U.S. 853 (1990).

⁴² Even though Respondents did not allege in their Complaint that the 2005 Act violates their free speech rights under the First Amendment (*see* Complaint, A-22 to A-31), the district court nevertheless indicated that the Act violates those rights. *See* A-17 ("[T]he 2005 Act's compelled speech, through the signage requirements or the personal notice requirements, infringe on the message the religious institutions wish to communicate to the public.").

⁴³ *See, e.g., West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633 (1943) (striking down compulsory flag salute and pledge); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (striking down statute making it a crime to obscure words "Live Free or Die" on state license plates).

⁴⁴ For example, in *Pacific Gas and Elec. Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1, 17-18 (1986), the court struck down an order requiring a utility to place in its

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other hand, a state may compel certain types of speech in the context of an overall program involving public health or safety if there is no ideological message involved.⁴⁵

The 2005 Act does not compel Respondents to make any expressive statement in violation of the First Amendment. There is no ideological, political, or literary message required to be expressed in the six-word sign or the personal notification. The message is comparable to that found in “exit” signs which must be posted. Because there are no unnecessary or objectionable words required, the 2005 Act does not affect the content of any religious “speech.”⁴⁶

III. THE CHALLENGED PORTIONS OF THE 2005 ACT AS APPLIED TO RESPONDENTS DO NOT VIOLATE THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000, 42 U.S.C. § 2000CC, ET SEQ.

Respondents also allege that the challenged portions of the 2005 Act violate the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C.

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billing envelopes newsletters of third parties that regularly have views critical of the utility. The court found that the order was not content neutral, but rather was intended to “offer the public a greater variety of views” and to assist groups that challenge the utility in front of the commission in raising funds. *Id.* at 13.

⁴⁵ See, e.g., *Eubanks v. Schmidt*, 126 F. Supp. 2d 451, 457-58 (W.D. Ky 2000) (upholding state requirement that physicians who perform abortions purchase state-written pamphlets providing medical and pregnancy assistance information, inform patients that they have the right to review those materials, and provide them free of charge); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 884 (1992) (same).

⁴⁶ Finally, even if the 2005 Act were to infringe Respondents’ free speech rights to such an extent that strict scrutiny were triggered, the 2005 Act is supported by compelling state interests and is narrowly tailored to serve those interests. See *discussion supra* at 27-32. The public, and especially permitted carriers of firearms, must be able to readily identify establishments that do not permit firearms.

§ 2000cc, *et seq.* RLUIPA provides protection for religious organizations against land use regulations that discriminate on the basis of religion.⁴⁷ Respondents contend that the challenged portions of the 2005 Act violate 42 U.S.C. § 2000cc(b)(1) and (b)(3) by treating religious organizations on less than equal terms than non-religious organizations and unreasonably limiting religious assemblies, institutions, or structures within a jurisdiction.⁴⁸ As a matter of law, this is a fatally flawed claim.

A. The 2005 Act Is Not Covered By RLUIPA Because It Is Not A Land Use Regulation.

A party seeking to invoke RLUIPA must first demonstrate that the facts of its case trigger one of the jurisdictional bases in the statute. *Prater v. City of Burnside*, 289 F.3d 417, 433 (6th Cir.), *cert. denied* 537 U.S. 108 (2002). Before the Court can consider whether the 2005 Act violates RLUIPA, it must find that the 2005 Act constitutes a “land use regulation.” *Id.* at 433-34. 42 U.S.C. § 2000cc(a)(1), (b)(1)-(2). Under the plain meaning of the language of the RLUIPA’s definitions, the 2005 Act is not a land use regulation.

⁴⁷ Congress did not intend RLUIPA to provide religious institutions with a blanket exemption from governmental regulation. See *Hale O Kaula Church v. Maui Planning Comm’n*, 229 F. Supp. 2d 1056, 1071 (D. Haw. 2002) (citing 146 Cong. Rec. S7776).

⁴⁸ At least one court has held that the “equal terms” and “unreasonably limits” provisions (§§ 2000cc(b)(1) and (3)) of RLUIPA are subordinate to the provision in § 2000cc(a) which requires the party invoking RLUIPA to show that the governmental action in question imposes a “substantial burden” on religious exercise. *Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston*, 250 F. Supp. 2d 961, 990-91 (N.D. Ill. 2003). Respondents have not made such a showing.

42 U.S.C. § 2000cc-5(5) defines a “land use regulation” as “a zoning or landmarking law . . . that limits or restricts a claimant’s use or development of land (including a structure affixed to land).”⁴⁹ “Zoning” law is defined as follows:

[W]e note that “[a] zoning statute or ordinance is one which, by definition, regulates the building development and uses of property.” [Citation omitted.]; see Minn. Stat. § 462.352, subd. 15 (2004) (defining “official controls” under the Municipal Planning Act as ordinances and regulations that control the physical development of a city and “implement the general objectives of the comprehensive plan”).

Mendota Golf, LLP, v. City of Mendota Heights, 708 N.W.2d 162, 172 (Minn. 2006).

Not all land-related or building-related regulations fall within the purview of “zoning”; for example, the courts have held that the following do not constitute “land use regulations” within the purview of RLUIPA: (1) a “mandatory sewer tap-in” ordinance governing connection to the municipal sewer system;⁵⁰ (2) annexation statutes;⁵¹

⁴⁹ The legislative history indicates that Congress enacted RLUIPA to address zoning laws which prohibited the building or operation of religious institutions. See Roman P. Storzer and Anthony R. Picarello, Jr., *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 Geo. Mason L. Rev. 929, 945-46 (Summer 2001). One of the sponsors of RLUIPA described the need to protect religious organizations from “pervasive land use regulations” which “often prevent religious assemblies and institutions from obtaining access to a place of worship” (146 Cong. Rec. S6687 (Jul. 13, 2000)) or required congregations to obtain a special permit to build pursuant to the unchecked discretion of a zoning board (*id.* at S7774 (July 27, 2000)).

⁵⁰ See *Second Baptist Church of Leechburg v. Gilpin Township*, 118 F.3d Appx. 615, 617 (3d Cir. 2004).

⁵¹ See *Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975, 998 (7th Cir. 2006).

(3) eminent domain proceedings;⁵² and (4) a city's decision to develop city-owned land adjacent to a church.⁵³

The 2005 Act concerns firearm permits and where permittees are allowed to lawfully carry their firearms. It does not regulate building development, restrict how a building or property is developed or used, or control the physical development of a city. The 2005 Act is also not part of a zoning code. It does not interfere with Respondents' ability to use their lands or buildings for any purpose that they so choose. There is no legislative history, case law, or other precedent that supports a conclusion that the 2005 Act constitutes "zoning." Because the 2005 Act is not a "zoning law," RLUIPA does not apply in this case.

Using the district court's interpretation, any law or regulation that concerns human behavior could conceivably be a regulation of "land use" if the behavior occurs on land, including, for example, laws that prohibit smoking on certain properties or allowing service animals in public places. Because most human activities occur on land, such an overbroad interpretation would place almost all of Minnesota statutes and rules within the category of "zoning laws."

⁵² See *City and County of Honolulu v. Sherman*, 129 P.2d 542, 564 (Haw. 2006); and *Faith Temple Church v. Town of Brighton*, 405 F. Supp. 2d 250, 254 (W.D. N.Y. 2005).

⁵³ See *Prater*, 289 F.3d at 434.

B. The 2005 Act Does Not Treat Religious Organizations On Less Than Equal Terms.

RLUIPA prohibits land use regulations which treat religious organizations less favorably than non-religious organizations. 42 U.S.C. § 2000cc(b)(1). The 2005 Act affects Respondents exactly the same as it affects all non-religious organizations. Accordingly, the Act does not violate RLUIPA even if the Court decides the Act is a land use regulation.

The purpose of § 2000cc(b)(1) “is to forbid governments from prohibiting religious assembly uses while allowing equivalent, and often more intensive, non-religious assembly uses.” *Ventura County Christian High Sch. v. City of San Buenaventura*, 233 F. Supp. 2d 1241, 1246 (C.D. Cal. 2002). An example of the type of unequal treatment RLUIPA prohibits is a city turning down a church’s application for a building permit while granting permits to clubs and other social organizations. See Shawn Jensvold, *The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA): A Valid Exercise of Congressional Power?*, 16 BYU J. PUB. L. 1, 25 (2001).

Conversely, a religious organization which has not been treated in an unequal manner to similarly situated non-religious entities has no actionable RLUIPA claim. *Ventura County Christian*, 233 F. Supp. 2d at 1247. When a facially neutral statute does not single out religious organizations for special treatment, it cannot be said to treat religious organizations on less than equal terms. *Hale O Kaula Church*, 229 F. Supp. 2d 1056, 1070-71 (D. Haw. 2002). For example, a zoning provision prohibiting all membership organizations, while allowing bars and restaurants, was held to not treat

religious organizations on less than equal terms because it treated religious and non-religious membership organizations the same. *See Petra Presbyterian Church v. Vill. of Northbrook*, No. 03 C 1936, 2003 WL 22048089 at *12 (N.D. Ill. Aug. 29, 2003) (Nolan, Magistrate J.), *report and recommendation adopted by Petra Presbyterian Church v. Vill. of Northbrook*, No. 03 C 1936, 2004 WL 442630 (N.D. Ill. Mar. 8, 2004).

Respondents base their religious discrimination claim on the fact that the 2005 Act does not treat all building owners identically: i.e., churches (and all other “private establishments) have different notification requirements and different rights to ban firearms than residential owners, courthouse complexes and the State Capitol area. However, RLUIPA does not require that all uses of property be treated alike.⁵⁴ Rather, parties who bring a discrimination claim under 42 U.S.C. § 2000cc(b) must “identify similarly situated *nonsecular assemblies* which are treated more favorably than secular institutions and then *identify no rational basis* for the distinction related to the [government’s] goal.” *The Lighthouse Inst. for Evangelism v. City of Long Branch*, 406 F. Supp. 2d 507, 517 (D. N.J. 2005). (Emphasis added.) Failure to demonstrate that a religious institution is treated less favorably than a nonsecular assembly defeats a religious discrimination claim.

⁵⁴ *See Congregation of Kol Ami v. Abington Township*, 309 F.3d 120, 139 (3d Cir. 2002) (“[T]o conclude . . . that all uses with a similar impact must be treated alike, regardless of the fact that some uses may be fundamentally distinct, . . . would turn zoning law on its head. . . . Placing the burden on the complaining party to first establish that it is similarly situated with other, permitted uses preserves the clearly established local authority in the land use context.”).

C. The 2005 Act Does Not Unreasonably Limit Religious Organizations.

RLUIPA also prohibits land use regulations which “unreasonably limit[] religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3)(B). Section 2000cc(b)(3)(B) “codifies existing Supreme Court Equal Protection jurisprudence under the Fourteenth Amendment.” *Freedom Baptist Church of Delaware County v. Township of Middletown*, 204 F. Supp. 2d 857, 871 (E.D. Pa. 2002). A zoning regulation that is “neutral on its face and is justified by a legitimate, non-discriminatory municipal planning goals” does not violate Section 2000cc(b)(3)(B). *Vision Church United Methodist*, 468 F.3d at 990-91. Because the 2005 Act does not limit the existence of religious organizations at all, let alone to an unreasonable degree, the Act does not violate RLUIPA.

IV. THE DISTRICT COURT ERRED IN DECLARING THE ENTIRE 2005 ACT UNCONSTITUTIONAL AS APPLIED TO RESPONDENTS.

The district court erred because its decision declaring the entire 2005 Act unconstitutional violates basic premises of constitutional jurisprudence by going further than necessary to decide the merits of Respondents’ claims. It is axiomatic that the power to declare a statute unconstitutional must be exercised “only when absolutely necessary and then only with great caution.” *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 788 (Minn. 1989). It is well settled that if a part of a statute is unconstitutional, “that fact does not authorize the courts to declare the remainder void also, unless all the provisions are . . . so connected together . . . that it cannot be presumed the legislature would have passed one without the other.” *Associated Builders and Contractors*, 610

N.W.2d at 305, quoting *Anderson v. Sullivan*, 75 N.W. 8, 9-10 (Minn. 1898). The district court's decision violated these principles.

It is clear from the all the records in this proceedings, including Respondents' Complaint and their memoranda of law filed with the district court, that Respondents' claims in this matter were limited to the four challenged provisions discussed *supra* at 16-24, i.e., the "reasonable notice" provisions and the restrictions on banning firearms with respect to certain portions of Respondents' properties. Nevertheless, the Court declared that the *entire* 2005 Act unconstitutional, as follows:

3. The 2005 Act is unconstitutional, as it violates the rights of the plaintiffs with respect to their right of freedom of conscience under Article 1, Section 16 of the Minnesota Constitution.
4. The 2005 Act is unconstitutional, as it violates the rights of the plaintiffs with respect to their right of free association under the First and Fourteenth Amendments to the United States Constitution.

See A-5. The district court, although recognizing the existence of the 2005 Act's severability clause (quoted at A-4), neither gave effect to the severability clause nor explained why the challenged provisions were not severable under the principles set forth in *Associated Builders*. This was reversible error.

V. THE DISTRICT COURT'S INJUNCTION, BASED ON RESPONDENTS' RELIGIOUS BELIEFS, UNLAWFULLY ESTABLISHES RELIGION IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE MINNESOTA CONSTITUTION.

By granting Respondents injunctive relief based on Respondents' religious beliefs, the district court has created a "religious exemption" to the 2005 Act that confers a

particular benefit on certain religious institutions.⁵⁵ The district court's injunction violates not only the Establishment Clause of the First Amendment to the U.S. Constitution, but also Article I, Section 16 of the Minnesota Constitution.

The First Amendment to the United States Constitution provides that government shall make no law respecting an establishment of religion." U.S. Const. Amend. I. Likewise, Article I, Section 16 of the Minnesota Constitution "prohibits the establishment of religion or giving a preference to any religion." *Olson v. First Church of Nazarene*, 661 N.W.2d 254, 261 (Minn. Ct. App. 2003). It is a well-established principle that "civil power must be exercised in a manner neutral to religion." *Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 510 U.S. 687, 704 (1994). Religious exemptions to state law must not "have the purpose or effect of sponsoring certain religious tenets or religious beliefs in general." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 16-17 (1989) (sales tax exemption for religious periodicals struck down as a blatant endorsement of religion). When the government "acts with the ostensible and predominant purpose of advancing religion, it violates the central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides." *McCreary County v. American Civil Liberties Union*, 545 U.S. 844, ___, 125 S. Ct. 2722, 2733 (2005).

⁵⁵ The district court states that its grant of a religious exemption "would place Minnesota in line with 13 other states that have some form of religious exemption to their 'shall issue' laws." A-15. Legislative judgments, such as whether to align Minnesota laws to those of other states, is properly the province of the Legislature, not the courts.

The United State Supreme Court has recognized that there is sometimes competition between the Establishment Clause and the First Amendment's guarantee of free exercise of religion; e.g. "limits on governmental action that might make sense as a way to avoid establishment could arguably limit freedom of speech when the speaking is done under government auspices." *McCreary*, 545 U.S. at ___, 125 S. Ct. at 2742. As a result, these competing values must be very carefully balanced; a court must avoid granting an injunction based on free exercise that has the effect of creating a preference for religious beliefs.

As written, the 2005 Act strikes a careful and constitutional balance between free exercise, the Establishment Clause, and the rights of persons lawfully carrying firearms. It allows *all* private establishments, including religious institutions, to choose to ban weapons in their premises but without unreasonably burdening the right to lawfully carry firearms in parking lots and tenant spaces. Property devoted to "religious sanctuary" enjoys the same rights and restrictions regarding firearms bans as all other similarly situated private establishments. The "reasonable notice" provisions of the 2005 Act are strictly content neutral and as non-intrusive as possible. The district court's injunction, however, destroys the religious neutrality achieved by the 2005 Act and thus goes too far in the direction of advancing religion over non-religion.

Viewing the district court's injunction through the eyes of a law-abiding gun permit-holder illustrates how the injunction favors religion over non-religion. A lawful permit-holder can approach the premises of a non-religious establishment with the expectation that there will either be a plainly-worded, unambiguous and statutorily

compliant sign at the entrance or that personal notice will be given if the establishment bans guns. If neither form of notice is given by the establishment, the permit-holder may carry a firearm into the premises with the certainty that he or she is not in jeopardy of committing an offense under Minn. Stat. § 624.714, subd. 17(a).

However, based *solely on Respondents' religious beliefs*, the district court has issued an injunction that allows religious institutions to give notice "in any lawful manner." This puts the permit-holder in the untenable position of not knowing whether a particular religious institution bans guns or not. For example, if a religious institution bans guns by posting a sign simply stating its commitment to "peacemaking, nonviolence, and maintaining a place of sanctuary," the permit-holder may justifiably not understand that carrying a gun into the premises violates a gun ban and subjects the permit-holder to the adverse consequences of violating the ban. Adverse consequences could range anywhere from the minor inconvenience of having to temporarily leave the building to take the gun to the permit-holder's car; to the moderately embarrassing situation of being asked to leave the premises; or to the seriously embarrassing and humiliating situation of being escorted out of the building by law enforcement personnel. Because it eliminates the uniformity and certainty built into the 2005 Act, the injunction puts the permit-holder at an unfair risk at religious institutions that the permit-holder does not face at non-religious establishments. This unreasonable risk is the direct result of the district court's act of exempting religious institutions, and *only* religious institutions, from the alternative "reasonable notice" provisions of the 2005 Act.

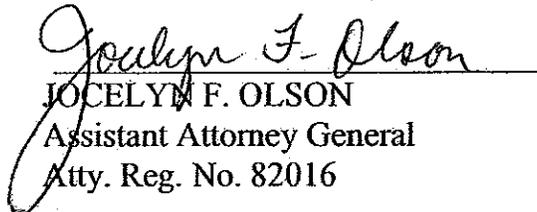
Because the district court's injunction goes too far in preferring religion over non-religion in violation of the Establishment Clause, this Court should reverse.

CONCLUSION

Based on the foregoing, the State respectfully requests this Court to reverse the decision of the district court in its entirety.

Dated: February 15, 2007 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

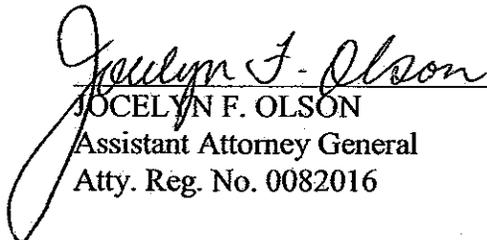
WITH MINN. R. APP. P 132.01, Subd. 3

The undersigned certifies that the Brief submitted herein contains 13,617 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2003, the word processing system used to prepare this Brief.

Dated: February 15, 2007

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ADDENDUM

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Minnesota Session Laws 2005 - Chapter 83

Key: (1)~~Language to be deleted~~ (2)New language
Legislative history and Authors

CHAPTER 83- S.F.No. 2259

An act relating to public safety; reenacting the Minnesota Citizens' Personal Protection Act of 2003 with certain amendments; recognizing the inherent right of law-abiding citizens to self-protection through the lawful use of self-defense; providing a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol; providing criminal penalties; amending Minnesota Statutes 2004, sections 609.66, subdivision 1d; 624.714, subdivisions 1b, 2, 2a, 3, 8, 12, 17, as reenacted, by adding a subdivision.

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

Section 1. [REENACTMENT OF PERSONAL PROTECTION ACT.]
Laws 2003, chapter 28, articles 2 and 3, are reenacted effective retroactively and without interruption from April 28, 2003.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2004, section 609.66, subdivision 1d, is amended to read:

Subd. 1d. [POSSESSION ON SCHOOL PROPERTY; PENALTY.] (a) Except as provided under paragraphs (c) and (e), whoever possesses, stores, or keeps a dangerous weapon or uses or brandishes a replica firearm or a BB gun while knowingly on school property is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both.

(b) Whoever possesses, stores, or keeps a replica firearm or a BB gun on school property is guilty of a gross misdemeanor.

(c) Notwithstanding paragraph (a) or (b), it is a misdemeanor for a person authorized to carry a firearm under the provisions of a permit or otherwise to carry a firearm on or about the person's clothes or person in a location the person knows is school property. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(d) As used in this subdivision:

- (1) "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter;
- (2) "dangerous weapon" has the meaning given it in section 609.02, subdivision 6;
- (3) "replica firearm" has the meaning given it in section 609.713; and
- (4) "school property" means:

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- (i) a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school;
- (ii) a child care center licensed under chapter 245A during the period children are present and participating in a child care program;
- (iii) the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, cocurricular, noncurricular, extracurricular, and supplementary activities; and
- (iv) that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

(e) This subdivision does not apply to:

- (1) active licensed peace officers~~;~~
- (2) military personnel~~;~~ or students participating in military training, who are on-duty, performing official duties;
- ~~(2)~~ (3) persons authorized to carry a pistol under section 624.714 while in a motor vehicle or outside of a motor vehicle to directly place a firearm in, or retrieve it from, the trunk or rear area of the vehicle;
- ~~(3)~~ (4) persons who keep or store in a motor vehicle pistols in accordance with section 624.714 or 624.715 or other firearms in accordance with section 97B.045;
- ~~(4)~~ (5) firearm safety or marksmanship courses or activities conducted on school property;
- ~~(5)~~ (6) possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;
- ~~(6)~~ (7) a gun or knife show held on school property;
- ~~(7)~~ (8) possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or
- ~~(8)~~ (9) persons who are on unimproved property owned or leased by a child care center, school, or school district unless the person knows that a student is currently present on the land for a school-related activity.

(f) Notwithstanding section 471.634, a school district or other entity composed exclusively of school districts may not regulate firearms, ammunition, or their respective components, when possessed or carried by nonstudents or nonemployees, in a manner that is inconsistent with this subdivision.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2004, section 624.714, subdivision 1b, is amended to read:

Subd. 1b. [DISPLAY OF PERMIT; PENALTY.] (a) The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer, as defined in section 626.84, subdivision 1. A violation of this paragraph is a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in the office of the arresting officer, that the person was authorized to carry the pistol at the time of the alleged violation.

(c) Upon the request of a peace officer, a permit holder must write a sample signature in the officer's presence to aid in verifying the person's identity.

(d) Upon the request of a peace officer, a permit holder shall disclose to the officer whether or not the permit holder is currently carrying a firearm.

Sec. 4. Minnesota Statutes 2004, section 624.714, subdivision 2, is amended to read:

Subd. 2. [WHERE APPLICATION MADE; AUTHORITY TO ISSUE PERMIT; CRITERIA; SCOPE.] (a) Applications by Minnesota residents for permits to carry shall be made to the county sheriff where the applicant resides. Nonresidents, as defined in section 171.01, subdivision 42, may apply to any sheriff.

(b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:

(1) has training in the safe use of a pistol;

(2) is at least 21 years old and a citizen or a permanent resident of the United States;

(3) completes an application for a permit;

(4) is not prohibited from possessing a firearm under the following sections:

(i) 518B.01, subdivision 14;

(ii) 609.224, subdivision 3;

(iii) 609.2242, subdivision 3;

(iv) 609.749, subdivision 8;

(v) 624.713;

(vi) 624.719;

(vii) 629.715, subdivision 2; ~~or~~

(viii) 629.72, subdivision 2; or

(ix) any federal law; and

(5) is not listed in the criminal gang investigative data system under section 299C.091.

(c) A permit to carry a pistol issued or recognized under this section is a state permit and is effective throughout the state.

(d) A sheriff may contract with a police chief to process permit applications under this section. If a sheriff contracts with a police chief, the sheriff remains the issuing authority and the police chief acts as the sheriff's agent. If a sheriff contracts with a police chief, all of the provisions of this section will apply.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2004, section 624.714, subdivision 2a, is amended to read:

Subd. 2a. [TRAINING IN THE SAFE USE OF A PISTOL.] (a) An applicant must present evidence that the applicant received training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by:

(1) employment as a peace officer in the state of Minnesota within the past year; or

(2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

(b) Basic training must include:

- (1) instruction in the fundamentals of pistol use;
- (2) successful completion of an actual shooting qualification exercise; and
- (3) instruction in the fundamental legal aspects of pistol possession, carry, and use, including self-defense and the restrictions on the use of deadly force.

(c) The certified instructor must issue a certificate to a person who has completed a firearms safety or training course described in paragraph (b). The certificate must be signed by the instructor and attest that the person attended and completed the course.

(d) A person qualifies as a certified instructor if the person is certified as a firearms instructor within the past five years by+

~~(1) the Bureau of Criminal Apprehension, Training and Development Section;~~

~~(2) the Minnesota Association of Law Enforcement Firearms Instructors;~~

~~(3) the National Rifle Association;~~

~~(4) the American Association of Certified Firearms Instructors;~~

~~(5) the Peace Officer Standards and Training Board of this state or a similar agency of another state that certifies firearms instructors; or~~

~~(6) the Department of Public Safety of this state or a similar agency of another state that certifies firearms instructors~~ an organization or government entity that has been approved by the Department of Public Safety in accordance with the department's standards.

~~(d)~~ (e) A sheriff must accept the training described in this subdivision as meeting the requirement in subdivision 2, paragraph (b), for training in the safe use of a pistol. A sheriff may also accept other satisfactory evidence of training in the safe use of a pistol.

[EFFECTIVE DATE.] This section is effective the day following final enactment, except for the changes made in paragraph (d), which are effective October 1, 2005.

Sec. 6. Minnesota Statutes 2004, section 624.714, subdivision 3, is amended to read:

Subd. 3. [FORM AND CONTENTS OF APPLICATION.] (a) Applications for permits to carry must be an official, standardized application form, adopted under section 624.7151, and must set forth in writing only the following information:

(1) the applicant's name, residence, telephone number, if any, and driver's license number or state identification card number;

(2) the applicant's sex, date of birth, height, weight, and color of eyes and hair, and distinguishing physical characteristics, if any;

(3) the township or statutory city or home rule charter city, and county, of all states of residence Minnesota residences of the applicant in the last ~~ten~~ five years, though not including specific addresses;

(4) the township or city, county, and state of all non-Minnesota residences of the applicant in the last five years, though not including specific addresses;

(5) a statement that the applicant authorizes the release to the sheriff of commitment information about the applicant maintained by the commissioner of human services or any similar

agency or department of another state where the applicant has resided, to the extent that the information relates to the applicant's eligibility to possess a firearm; and

~~(5)~~ (6) a statement by the applicant that, to the best of the applicant's knowledge and belief, the applicant is not prohibited by law from possessing a firearm.

(b) The statement under paragraph (a), clause ~~(4)~~ (5), must comply with any applicable requirements of Code of Federal Regulations, title 42, sections 2.31 to 2.35, with respect to consent to disclosure of alcohol or drug abuse patient records.

(c) An applicant must submit to the sheriff an application packet consisting only of the following items:

(1) a completed application form, signed and dated by the applicant;

(2) an accurate photocopy of ~~a the certificate, affidavit, or other document~~ described in subdivision 2a, paragraph (c), that is submitted as the applicant's evidence of training in the safe use of a pistol; and

(3) an accurate photocopy of the applicant's current driver's license, state identification card, or the photo page of the applicant's passport.

(d) In addition to the other application materials, a person who is otherwise ineligible for a permit due to a criminal conviction but who has obtained a pardon or expungement setting aside the conviction, sealing the conviction, or otherwise restoring applicable rights, must submit a copy of the relevant order.

(e) Applications must be submitted in person.

(f) The sheriff may charge a new application processing fee in an amount not to exceed the actual and reasonable direct cost of processing the application or \$100, whichever is less. Of this amount, \$10 must be submitted to the commissioner and deposited into the general fund.

(g) This subdivision prescribes the complete and exclusive set of items an applicant is required to submit in order to apply for a new or renewal permit to carry. The applicant must not be asked or required to submit, voluntarily or involuntarily, any information, fees, or documentation beyond that specifically required by this subdivision. This paragraph does not apply to alternate training evidence accepted by the sheriff under subdivision 2a, paragraph (d).

(h) Forms for new and renewal applications must be available at all sheriffs' offices and the commissioner must make the forms available on the Internet.

(i) Application forms must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder is or becomes prohibited by law from possessing a firearm. The notice must list the applicable state criminal offenses and civil categories that prohibit a person from possessing a firearm.

(j) Upon receipt of an application packet and any required fee, the sheriff must provide a signed receipt indicating the date of submission.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2004, section 62A.714, subdivision 8, is amended to read:

Subd. 8. [PERMIT TO CARRY VOIDED.] (a) The permit to carry is void ~~and must be revoked~~ at the time that the holder becomes prohibited by law from possessing a firearm, in which event the

holder must return the permit card to the issuing sheriff within five business days after the holder knows or should know that the holder is a prohibited person. ~~If a permit is revoked the sheriff has knowledge that a permit is void under this subdivision paragraph,~~ the sheriff must give notice to the permit holder in writing in the same manner as a denial. Failure of the holder to return the permit within the five days is a gross misdemeanor unless the court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

(b) When a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the court must ~~revoke the permit and, if it is available,~~ take possession of ~~it~~ the permit, if it is available, and send it to the issuing sheriff.

(c) The sheriff of the county where the application was submitted, or of the county of the permit holder's current residence, may file a petition with the district court therein, for an order revoking a permit to carry on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall be issued only if the sheriff meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses, including attorney fees.

(d) A permit revocation must be promptly reported to the issuing sheriff.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 8. Minnesota Statutes 2004, section 624.714, subdivision 12, is amended to read:

Subd. 12. **[HEARING UPON DENIAL OR REVOCATION.]** (a) Any person aggrieved by denial or revocation of a permit to carry may appeal by petition to the district court having jurisdiction over the county or municipality where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter must be heard de novo without a jury.

(b) The court must issue written findings of fact and conclusions of law regarding the issues submitted by the parties. The court must issue its writ of mandamus directing that the permit be issued and order other appropriate relief unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented, ~~and incidents for which the applicant was charged and acquitted,~~ may not be considered.

(c) If an applicant is denied a permit on the grounds that the applicant is listed in the criminal gang investigative data system under section 299C.091, the person may challenge the denial, after disclosure under court supervision of the reason for that listing, based on grounds that the person:

(1) was erroneously identified as a person in the data system;

(2) was improperly included in the data system according to the criteria outlined in section 299C.091, subdivision 2, paragraph (b); or

(3) has demonstrably withdrawn from the activities and associations that led to inclusion in the data system.

(d) If the court grants a petition brought under paragraph (a), the court must award the applicant or permit holder reasonable costs and expenses including attorney fees.

Sec. 9. Minnesota Statutes 2004, section 624.714, subdivision 17, as reenacted by section 1, is amended to read:

Subd. 17. [POSTING; TRESPASS.] (a) A person carrying a firearm on or about his or her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a firearm carried in violation of this subdivision is not subject to forfeiture.

(b) As used in this subdivision, the terms in this paragraph have the meanings given.

(1) "Reasonable request" means a request made under the following circumstances:

(i) the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES."; ~~and or~~

(ii) the requester or ~~its~~ the requester's agent personally informs the person of the posted request that guns are prohibited in the premises and demands compliance.

(2) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.

(3) "Conspicuous" means lettering in black arial typeface at least 1-1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(4) "Private establishment" means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

(c) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

(d) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(e) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(f) Notwithstanding any inconsistent provisions in section 609.605, this subdivision sets forth the exclusive criteria to notify a permit holder when otherwise lawful firearm possession is not allowed in a private establishment and sets forth the exclusive penalty for such activity.

(g) This subdivision does not apply to:

(1) ~~an on-duty~~ active licensed peace officer; or

(2) a security guard acting in the course and scope of employment.

[EFFECTIVE DATE.] This section is effective the day

following final enactment.

Sec. 10. Minnesota Statutes 2004, section 624.714, is amended by adding a subdivision to read:

Subd. 24. [PREDATORY OFFENDERS.] Except when acting under the authority of other law, it is a misdemeanor for a person required to register by section 243.166 to carry a pistol whether or not the carrier possesses a permit to carry issued under this section. If an action prohibited by this subdivision is also a violation of another law, the violation may be prosecuted under either law.

Sec. 11. [ADOPTION OF STANDARDS.]

By October 1, 2005, the Department of Public Safety shall adopt and publish minimum standards that organizations and government entities must meet to certify individuals as certified firearms instructors under Minnesota Statutes, section 624.714, subdivision 2a, paragraph (d).

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Presented to the governor May 20, 2005

Signed by the governor May 24, 2005, 2:45 p.m.

Please direct all comments concerning issues or legislation to your House Member or State Senator.

For Legislative Staff or for directions to the Capitol, visit the Contact Us page.

General questions or comments.



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Minnesota Session Laws 2003 - Chapter 28

Key: (1) ~~Language to be deleted~~ (2) New language
Legislative history and Authors

CHAPTER 28- S.F.No. 842

An act relating to state government regulation; requiring legislative approval of certain state park fees; modifying commissioner's authority relating to employees, gifts, and grants; modifying provisions of the state parks working capital fund; modifying application provisions for certain licenses; providing for reciprocity of certain safety courses; modifying certain county reimbursement provisions; modifying identification provisions for fish and dark houses; modifying littering prohibition; eliminating requirement to publish pamphlet form of laws; enacting the Minnesota Citizens' Personal Protection Act of 2003; recognizing the inherent right of law-abiding citizens to self-protection through the lawful use of self-defense; providing a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol; providing that persons convicted of crimes of violence are prohibited from possessing, receiving, shipping, or transporting firearms for the remainder of the person's lifetime; providing criminal penalties; appropriating money; amending Minnesota Statutes 2002, sections 13.871, by adding a subdivision; 16A.1283; 84.01, subdivision 3; 84.026; 84.085, subdivision 1; 84.791, by adding a subdivision; 84.82, subdivision 2; 84.862, by adding a subdivision; 84.925, by adding a subdivision; 85.20, subdivision 6; 85.22, by adding a subdivision; 86B.101, by adding a subdivision; 86B.401, subdivision 1; 97A.065, subdivision 2; 97B.020; 97C.355, subdivisions 1, 2; 169.42, subdivision 1; 169.421, subdivision 3; 242.31, subdivision 2a; 260B.245, subdivision 1; 609.165, subdivisions 1a, 1b, by adding a subdivision; 609.66, subdivision 1d; 609.68; 609A.03, subdivision 5a; 624.712, subdivision 5, by adding a subdivision; 624.713, subdivisions 1, 2, 3; 624.714, subdivisions 2, 3, 4, 6, 7, 8, 10, 12, by adding subdivisions; 638.02, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 624; repealing Minnesota Statutes 2002, sections 97A.051, subdivision 1; 624.714, subdivisions 1, 5; Minnesota Rules, part 6262.0100, subpart 2.

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

ARTICLE 1

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NATURAL RESOURCES REGULATORY PROVISIONS

Section 1. Minnesota Statutes 2002, section 16A.1283, is amended to read:

16A.1283 [LEGISLATIVE APPROVAL REQUIRED.]

(a) Notwithstanding any law to the contrary, an executive branch state agency may not impose a new fee or increase an existing fee unless the new fee or increase is approved by law. For purposes of this section, a fee is any charge for goods, services, regulation, or licensure, and, notwithstanding paragraph (b), clause (3), includes charges for admission to or for use of public facilities owned by the state.

(b) This section does not apply to:

- (1) charges billed within or between state agencies, or billed to federal agencies;
- (2) the Minnesota state colleges and universities system;
- (3) charges for goods and services provided for the direct and primary use of a private individual, business, or other entity; ~~or~~
- (4) charges that authorize use of state-owned lands and minerals administered by the commissioner of natural resources by the issuance of leases, easements, cooperative farming agreements, and land and water crossing licenses and charges for sales of state-owned lands administered by the commissioner of natural resources; or

(5) state park fees and charges established by commissioner's order.

(c) An executive branch agency may reduce a fee that was set by rule before July 1, 2001, without legislative approval. Chapter 14 does not apply to fee reductions under this paragraph.

Sec. 2. Minnesota Statutes 2002, section 84.01, subdivision 3, is amended to read:

Subd. 3. [EMPLOYEES; DELEGATION.] Subject to the provisions of Laws 1969, chapter 1129, and to other applicable laws the commissioner shall organize the department and employ up to three assistant commissioners, each of whom shall serve at the pleasure of the commissioner in the unclassified service, one of whom shall have responsibility for coordinating and directing the planning of every division within the agency, and such other officers, employees, and agents as the commissioner may deem necessary to discharge the functions of the department, define the duties of such officers, employees, and agents and to delegate to them any of the commissioner's powers, duties, and responsibilities subject to the control of, and under the conditions prescribed by, the commissioner. Appointments to exercise delegated power shall be by written order filed with the secretary of state.

Sec. 3. Minnesota Statutes 2002, section 84.026, is amended to read:

84.026 [CONTRACTS AND GRANTS FOR PROVISION OF NATURAL RESOURCES SERVICES.]

The commissioner of natural resources is authorized to enter into contractual or grant agreements with any public or private entity for the provision of statutorily prescribed natural resources services by or for the department. The contracts or grants shall specify the services to be provided and the amount and method of reimbursement. Funds generated in a contractual agreement made pursuant to this section shall be deposited in the special revenue fund and are appropriated to the department for purposes of providing the services specified in the contracts. All ~~such~~ contractual and grant agreements

shall be processed in accordance with the provisions of section 16C.05. The commissioner shall report revenues collected and expenditures made under this section to the chairs of the committees on appropriations in the house and finance in the senate by January 1 of each odd-numbered year.

Sec. 4. Minnesota Statutes 2002, section 84.085, subdivision 1, is amended to read:

Subdivision 1. [AUTHORITY.] (a) The commissioner of natural resources may accept for and on behalf of the state any gift, bequest, devise, or grants of lands or interest in lands or personal property of any kind or of money tendered to the state for any purpose pertaining to the activities of the department or any of its divisions. Any money so received is hereby appropriated and dedicated for the purpose for which it is granted. Lands and interests in lands so received may be sold or exchanged as provided in chapter 94.

(b) The commissioner of natural resources, on behalf of the state, may accept and use grants of money or property from the United States or other grantors for conservation purposes not inconsistent with the laws of this state. Any money or property so received is hereby appropriated and dedicated for the purposes for which it is granted, and shall be expended or used solely for such purposes in accordance with the federal laws and regulations pertaining thereto, subject to applicable state laws and rules as to manner of expenditure or use providing that the commissioner may make subgrants of any money received to other agencies, units of local government, private individuals, organizations, and private nonprofit corporations. Appropriate funds and accounts shall be maintained by the commissioner of finance to secure compliance with this section.

(c) The commissioner may accept for and on behalf of the permanent school fund a donation of lands, interest in lands, or improvements on lands. A donation so received shall become state property, be classified as school trust land as defined in section 92.025, and be managed consistent with section 127A.31.

Sec. 5. Minnesota Statutes 2002, section 84.791, is amended by adding a subdivision to read:

Subd. 4. [OFF-HIGHWAY MOTORCYCLE SAFETY COURSES; RECIPROCITY WITH OTHER STATES.] The commissioner may enter into reciprocity agreements or otherwise certify off-highway motorcycle environment and safety education and training courses from other states that are substantially similar to in-state courses. Proof of completion of a course subject to a reciprocity agreement or certified as substantially similar is adequate to meet the safety certificate requirements of sections 84.787 to 84.796.

Sec. 6. Minnesota Statutes 2002, section 84.82, subdivision 2, is amended to read:

Subd. 2. [APPLICATION, ISSUANCE, REPORTS, ADDITIONAL FEE.] (a) Application for registration or reregistration shall be made to the commissioner ~~of natural resources, or the commissioner of public safety~~ or an authorized deputy registrar of motor vehicles in ~~such form as a format prescribed by the commissioner of public safety shall prescribe,~~ and shall state the legal name and address of every owner of the snowmobile.

(b) A person who purchases a snowmobile from a retail dealer shall make application for registration to the dealer at the point of sale. The dealer shall issue a temporary registration permit to each purchaser who applies to the dealer for registration. The temporary registration is valid for 60

days from the date of issue. Each retail dealer shall submit completed registration and fees to the deputy registrar at least once a week. Upon receipt of the application and the appropriate fee as hereinafter provided, such snowmobile shall be registered and a registration number assigned which shall be affixed to the snowmobile in a clearly visible and permanent manner for enforcement purposes as the commissioner of natural resources shall prescribe. The registration is not valid unless signed by at least one owner.

(c) Each deputy registrar of motor vehicles acting pursuant to section 168.33, shall also be a deputy registrar of snowmobiles. The commissioner of natural resources in agreement with the commissioner of public safety may prescribe the accounting and procedural requirements necessary to assure efficient handling of registrations and registration fees. Deputy registrars shall strictly comply with these accounting and procedural requirements.

(d) A fee of \$2 in addition to that otherwise prescribed by law shall be charged for:

(1) each snowmobile registered by the registrar or a deputy registrar and the additional fee shall be disposed of in the manner provided in section 168.33, subdivision 2; or

(2) each snowmobile registered by the commissioner and the additional fee shall be deposited in the state treasury and credited to the snowmobile trails and enforcement account in the natural resources fund.

Sec. 7. Minnesota Statutes 2002, section 84.862, is amended by adding a subdivision to read:

Subd. 2a. [CERTIFICATES ISSUED IN OTHER STATES.] If a person completes a safety course in another state that is recognized by the commissioner under a reciprocity agreement, evidence that the person has completed that course is acceptable in lieu of a certificate under this section.

Sec. 8. Minnesota Statutes 2002, section 84.925, is amended by adding a subdivision to read:

Subd. 3. [ALL-TERRAIN VEHICLE SAFETY COURSES; RECIPROCITY WITH OTHER STATES.] The commissioner may enter into reciprocity agreements or otherwise certify all-terrain vehicle environmental and safety education and training courses from other states that are substantially similar to in-state courses. Proof of completion of a course subject to a reciprocity agreement or certified as substantially similar is adequate to meet the safety certificate requirements of sections 84.92 to 84.929.

Sec. 9. Minnesota Statutes 2002, section 85.20, subdivision 6, is amended to read:

Subd. 6. [LITTERING; PENALTY.] (a) No person shall drain, throw, or deposit upon the lands and waters within ~~a state park~~ any unit of the outdoor recreation system as defined in section 86A.04 any substance, including cigarette filters and debris from fireworks, that would mar the appearance, create a stench, destroy the cleanliness or safety of the land, or would be likely to injure any animal, vehicle, or person traveling upon those lands and waters. The operator of a vehicle or watercraft, except a school bus or a vehicle transporting passengers for hire and regulated by the interstate commerce commission, shall not permit articles to be thrown or discarded from the vehicle upon any lands or waters within ~~a state park~~ any unit of the outdoor recreation system.

(b) Violation of this subdivision is a misdemeanor. Any

person sentenced under this subdivision shall in lieu of the sentence imposed be permitted, under terms established by the court, to work under the direction of the department of natural resources at clearing rubbish, trash, and debris from any ~~state park~~ unit of the outdoor recreation system. The court may for any violation of this subdivision order the offender to perform such work under terms established by the court with the option of a jail sentence being imposed.

(c) In lieu of enforcement under paragraph (b), this subdivision may be enforced by imposition of a civil penalty and an action for damages for littering under section 115A.99.

Sec. 10. Minnesota Statutes 2002, section 85.22, is amended by adding a subdivision to read:

Subd. 5. [EXEMPTION.] Purchases made from the state parks working capital fund are exempt from competitive bidding, notwithstanding chapter 16C.

Sec. 11. Minnesota Statutes 2002, section 86B.101, is amended by adding a subdivision to read:

Subd. 4. [BOAT SAFETY EDUCATION PROGRAM; RECIPROCITY WITH OTHER STATES.] The commissioner may enter into reciprocity agreements or otherwise certify boat safety education programs from other states that are substantially similar to in-state programs. The commissioner shall issue a watercraft operator's permit to a person who provides proof of completion of a program subject to a reciprocity agreement or certified as substantially similar.

Sec. 12. Minnesota Statutes 2002, section 86B.401, subdivision 1, is amended to read:

Subdivision 1. [APPLICATION.] (a) A person may apply to the commissioner ~~of natural resources~~, the commissioner of public safety, or an authorized deputy registrar of motor vehicles to license a watercraft in a ~~form as~~ format prescribed by the commissioner ~~of public safety~~.

(b) The application must state the names and addresses of all owners of the watercraft.

Sec. 13. Minnesota Statutes 2002, section 97A.065, subdivision 2, is amended to read:

Subd. 2. [FINES AND FORFEITED BAIL.] (a) Fines and forfeited bail collected from prosecutions of violations of: the game and fish laws or rules adopted thereunder; sections 84.091 to 84.15 or rules adopted thereunder; sections 84.81 to 84.91 or rules adopted thereunder; section 169A.20, when the violation involved an off-road recreational vehicle as defined in section 169A.03, subdivision 16; chapter 348; and any other law relating to wild animals or aquatic vegetation, must be paid to the treasurer of the county where the violation is prosecuted. The county treasurer shall submit one-half of the receipts to the commissioner and credit the balance to the county general revenue fund except as provided in paragraphs (b), (c), and (d). In a county in a judicial district under section 480.181, subdivision 1, paragraph (b), the share that would otherwise go to the county under this paragraph must be submitted to the state treasurer for deposit in the state treasury and credited to the general fund.

(b) The commissioner ~~must~~ may reimburse a county, from the game and fish fund, for the cost of keeping prisoners prosecuted for violations of the game and fish laws under this section if the county board, by resolution, directs: (1) the county treasurer to submit all game and fish fines and forfeited bail to the commissioner; and (2) the county auditor to certify and

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submit monthly itemized statements to the commissioner.

(c) The county treasurer shall submit one-half of the receipts collected under paragraph (a) from prosecutions of violations of sections 84.81 to 84.91 or rules adopted thereunder, and 169A.20, except receipts that are surcharges imposed under section 357.021, subdivision 6, to the commissioner and credit the balance to the county general fund. The commissioner shall credit these receipts to the snowmobile trails and enforcement account in the natural resources fund.

(d) The county treasurer shall indicate the amount of the receipts that are surcharges imposed under section 357.021, subdivision 6, and shall submit all of those receipts to the state treasurer.

Sec. 14. Minnesota Statutes 2002, section 97B.020, is amended to read:

97B.020 [FIREARMS SAFETY CERTIFICATE REQUIRED.]

(a) Except as provided in this section and section 97A.451, subdivision 3a, a person born after December 31, 1979, may not obtain an annual license to take wild animals by firearms unless the person has a firearms safety certificate or equivalent certificate, driver's license or identification card with a valid firearms safety qualification indicator issued under section 171.07, subdivision 13, previous hunting license, or other evidence indicating that the person has completed in this state or in another state a hunter safety course recognized by the department under a reciprocity agreement or certified by the department as substantially similar. A person who is on active duty and has successfully completed basic training in the United States armed forces, reserve component, or national guard may obtain a hunting license or approval authorizing hunting regardless of whether the person is issued a firearms safety certificate.

(b) A person born after December 31, 1979, may not use a lifetime license to take wild animals by firearms, unless the person meets the requirements for obtaining an annual license under paragraph (a).

Sec. 15. Minnesota Statutes 2002, section 97C.355, subdivision 1, is amended to read:

Subdivision 1. [IDENTIFICATION REQUIRED.] All shelters on the ice of state waters, including dark houses and fish houses, must have: (1) the owner's name and address or, (2) the owner's driver's license number of an, or (3) the "MDNR#" license identification number issued to the owner legibly displayed on the exterior with characters at least two inches high.

Sec. 16. Minnesota Statutes 2002, section 97C.355, subdivision 2, is amended to read:

Subd. 2. [LICENSE REQUIRED.] A person may not take fish from a dark house or fish house unless the house is licensed and has a durable license tag attached to the exterior ~~as prescribed by the commissioner in a readily visible location~~, except as provided in this subdivision. The commissioner must issue a durable tag ~~that is at least two inches in diameter with a 3/16 inch hole in the center~~ with a dark house or fish house license. ~~The durable tag must be~~ marked with a number to correspond with the license and the year of issue. A dark house or fish house license is not required of a resident on boundary waters where the adjacent state does not charge a fee for the same activity.

Sec. 17. Minnesota Statutes 2002, section 169.42, subdivision 1, is amended to read:

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Subdivision 1. [DANGEROUS OBJECT ON HIGHWAY.] No person shall throw, deposit, place or dump, or cause to be thrown, deposited, placed or dumped upon any street or highway or upon any public or privately owned land adjacent thereto without the owner's consent any snow, ice, glass bottle, glass, nails, tacks, wire, cans, garbage, swill, papers, ashes, cigarette filters, debris from fireworks, refuse, carcass of any dead animal, offal, trash or rubbish or any other form of offensive matter or any other substance likely to injure any person, animal or vehicle upon any such street or highway.

Sec. 18. Minnesota Statutes 2002, section 169.421, subdivision 3, is amended to read:

Subd. 3. [CIVIL LIABILITY IMPOSED.] If any solid waste, including litter, glass, nails, tacks, wire, cans, bottles, garbage, papers, refuse, trash, cigarette filters, debris from fireworks, or any form of offensive matter is thrown, deposited, placed, or dumped from a vehicle upon any street or highway, public land, or upon private land without the consent of the owner of the land, a violation of this subdivision occurs and civil liability is imposed upon the owner of the vehicle. The driver and passengers riding in a vehicle are constituted as the agents of the owner of the vehicle for purposes of this subdivision. It is a defense to any action brought pursuant to this section that the vehicle was stolen. This section is not applicable to the owner of a vehicle transporting persons for hire or transporting school children.

Sec. 19. Minnesota Statutes 2002, section 609.68, is amended to read:

609.68 [UNLAWFUL DEPOSIT OF GARBAGE, LITTER, OR LIKE.]

Whoever unlawfully deposits garbage, rubbish, cigarette filters, debris from fireworks, offal, or the body of a dead animal, or other litter in or upon any public highway, public waters or the ice thereon, shoreland areas adjacent to rivers or streams as defined by section 103F.205, public lands, or, without the consent of the owner, private lands or water or ice thereon, is guilty of a misdemeanor.

Sec. 20. [REPEALER.]

Minnesota Statutes 2002, section 97A.051, subdivision 1, is repealed. Minnesota Rules, part 6262.0100, subpart 2, is repealed.

ARTICLE 2

PUBLIC SAFETY REGULATORY PROVISIONS

Section 1. Minnesota Statutes 2002, section 13.871, is amended by adding a subdivision to read:

Subd. 9. [PISTOL PERMIT DATA.] Data on persons permitted to carry pistols under the terms of a permit must be shared as required by section 624.714, subdivision 6.

Sec. 2. Minnesota Statutes 2002, section 609.66, subdivision 1d, is amended to read:

Subd. 1d. [~~FELONY~~, POSSESSION ON SCHOOL PROPERTY; PENALTY.] (a) Except as provided under paragraphs (c) and (e), whoever possesses, stores, or keeps a dangerous weapon or uses or brandishes a replica firearm or a BB gun while knowingly on school property is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both.

(b) Whoever possesses, stores, or keeps a replica firearm or a BB gun on school property is guilty of a gross misdemeanor.

(c) Notwithstanding paragraph (a) or (b), it is a

misdemeanor for a person authorized to carry a firearm under the provisions of a permit or otherwise to carry a firearm on or about the person's clothes or person in a location the person knows is school property. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(d) As used in this subdivision:

(1) "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter;

(2) "dangerous weapon" has the meaning given it in section 609.02, subdivision 6;

(3) "replica firearm" has the meaning given it in section 609.713; and

(4) "school property" means:

(i) a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school; ~~and~~

(ii) a child care center licensed under chapter 245A during the period children are present and participating in a child care program;

(iii) the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, cocurricular, noncurricular, extracurricular, and supplementary activities; and

(iv) that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

~~(d)~~ (e) This subdivision does not apply to:

(1) licensed peace officers, military personnel, or students participating in military training, who are on-duty, performing official duties;

(2) persons who carry pistols according to the terms of a permit authorized to carry a pistol under section 624.714 while in a motor vehicle or outside of a motor vehicle to directly place a firearm in, or retrieve it from, the trunk or rear area of the vehicle;

(3) persons who keep or store in a motor vehicle pistols in accordance with ~~sections~~ section 624.714 ~~and~~ or 624.715 or other firearms in accordance with section 97B.045;

(4) firearm safety or marksmanship courses or activities conducted on school property;

(5) possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;

(6) a gun or knife show held on school property; ~~or~~

(7) possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or

(8) persons who are on unimproved property owned or leased by a child care center, school, or school district unless the person knows that a student is currently present on the land for a school-related activity.

(f) Notwithstanding section 471.634, a school district or other entity composed exclusively of school districts may not regulate firearms, ammunition, or their respective components, when possessed or carried by nonstudents or nonemployees, in a manner that is inconsistent with this subdivision.

Sec. 3. Minnesota Statutes 2002, section 624.712, is amended by adding a subdivision to read:

Subd. 11. [COMMISSIONER.] "Commissioner" means the commissioner of public safety unless otherwise indicated.

Sec. 4. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 1a. [PERMIT REQUIRED; PENALTY.] A person, other than a peace officer, as defined in section 626.84, subdivision 1, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place, as defined in section 624.7181, subdivision 1, paragraph (c), without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor. A person who is convicted a second or subsequent time is guilty of a felony.

Sec. 5. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 1b. [DISPLAY OF PERMIT; PENALTY.] (a) The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer, as defined in section 626.84, subdivision 1. A violation of this paragraph is a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in the office of the arresting officer, that the person was authorized to carry the pistol at the time of the alleged violation.

(c) Upon the request of a peace officer, a permit holder must write a sample signature in the officer's presence to aid in verifying the person's identity.

Sec. 6. Minnesota Statutes 2002, section 624.714, subdivision 2, is amended to read:

Subd. 2. [WHERE APPLICATION MADE; AUTHORITY TO ISSUE PERMIT; CRITERIA; SCOPE.] (a) Applications by Minnesota residents for permits to carry shall be made to the chief of police of an organized full-time police department of the municipality where the applicant resides or to the county sheriff where there is no such local chief of police where the applicant resides. At the time of application, the local police authority shall provide the applicant with a dated receipt for the application. Nonresidents, as defined in section 171.01, subdivision 42, may apply to any sheriff.

(b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:

(1) has training in the safe use of a pistol;

(2) is at least 21 years old and a citizen or a permanent resident of the United States;

(3) completes an application for a permit;

(4) is not prohibited from possessing a firearm under the following sections:

(i) 518B.01, subdivision 14;

(ii) 609.224, subdivision 3;

(iii) 609.2242, subdivision 3;

(iv) 609.749, subdivision 8;

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- (v) 624.713;
- (vi) 624.719;
- (vii) 629.715, subdivision 2; or
- (viii) 629.72, subdivision 2; and

(5) is not listed in the criminal gang investigative data system under section 299C.091.

(c) A permit to carry a pistol issued or recognized under this section is a state permit and is effective throughout the state.

(d) A sheriff may contract with a police chief to process permit applications under this section. If a sheriff contracts with a police chief, the sheriff remains the issuing authority and the police chief acts as the sheriff's agent. If a sheriff contracts with a police chief, all of the provisions of this section will apply.

Sec. 7. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 2a. [TRAINING IN THE SAFE USE OF A PISTOL.] (a) An applicant must present evidence that the applicant received training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by:

(1) employment as a peace officer in the state of Minnesota within the past year; or

(2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

(b) Basic training must include:

(1) instruction in the fundamentals of pistol use;

(2) successful completion of an actual shooting qualification exercise; and

(3) instruction in the fundamental legal aspects of pistol possession, carry, and use, including self-defense and the restrictions on the use of deadly force.

(c) A person qualifies as a certified instructor if the person is certified as a firearms instructor within the past five years by:

(1) the bureau of criminal apprehension, training and development section;

(2) the Minnesota Association of Law Enforcement Firearms Instructors;

(3) the National Rifle Association;

(4) the American Association of Certified Firearms Instructors;

(5) the peace officer standards and training board of this state or a similar agency of another state that certifies firearms instructors; or

(6) the department of public safety of this state or a similar agency of another state that certifies firearms instructors.

(d) A sheriff must accept the training described in this subdivision as meeting the requirement in subdivision 2, paragraph (b), for training in the safe use of a pistol. A sheriff may also accept other satisfactory evidence of training in the safe use of a pistol.

Sec. 8. Minnesota Statutes 2002, section 624.714, subdivision 3, is amended to read:

Subd. 3. [FORM AND CONTENTS OF APPLICATION.] (a) Applications for permits to carry shall must be an official, standardized application form, adopted under section 624.7151.

and must set forth in writing only the following information:

(1) the applicant's name, residence, telephone number, if any, and driver's license number or nonqualification certificate number, if any, of the applicant or state identification card number;

(2) the applicant's sex, date of birth, height, weight, and color of eyes and hair, and distinguishing physical characteristics, if any, of the applicant;

(3) all states of residence of the applicant in the last ten years, though not including specific addresses;

(4) a statement that the applicant authorizes the release to the local police authority sheriff of commitment information about the applicant maintained by the commissioner of human services or any similar agency or department of another state where the applicant has resided, to the extent that the information relates to the applicant's eligibility to possess a pistol or semiautomatic military-style assault weapon under section 624.713, subdivision 1 firearm; and

(4) (5) a statement by the applicant that, to the best of the applicant's knowledge and belief, the applicant is not prohibited by section 624.713 from possessing a pistol or semiautomatic military-style assault weapon; and law from possessing a firearm.

(5) a recent color photograph of the applicant.

The application shall be signed and dated by the applicant. (b) The statement under paragraph (a), clause (3) (4), must comply with any applicable requirements of Code of Federal Regulations, title 42, sections 2.31 to 2.35, with respect to consent to disclosure of alcohol or drug abuse patient records.

(c) An applicant must submit to the sheriff an application packet consisting only of the following items:

(1) a completed application form, signed and dated by the applicant;

(2) an accurate photocopy of a certificate, affidavit, or other document that is submitted as the applicant's evidence of training in the safe use of a pistol; and

(3) an accurate photocopy of the applicant's current driver's license, state identification card, or the photo page of the applicant's passport.

(d) In addition to the other application materials, a person who is otherwise ineligible for a permit due to a criminal conviction but who has obtained a pardon or expungement setting aside the conviction, sealing the conviction, or otherwise restoring applicable rights, must submit a copy of the relevant order.

(e) Applications must be submitted in person.

(f) The sheriff may charge a new application processing fee in an amount not to exceed the actual and reasonable direct cost of processing the application or \$100, whichever is less. Of this amount, \$10 must be submitted to the commissioner of public safety and deposited into the general fund.

(g) This subdivision prescribes the complete and exclusive set of items an applicant is required to submit in order to apply for a new or renewal permit to carry. The applicant must not be asked or required to submit, voluntarily or involuntarily, any information, fees, or documentation beyond that specifically required by this subdivision. This paragraph does not apply to alternate training evidence accepted by the sheriff under subdivision 2a, paragraph (d).

(h) Forms for new and renewal applications must be available at all sheriffs' offices and the commissioner of public safety must make the forms available on the Internet.

(i) Application forms must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder is or becomes prohibited by law from possessing a firearm. The notice must list the applicable state criminal offenses and civil categories that prohibit a person from possessing a firearm.

(j) Upon receipt of an application packet and any required fee, the sheriff must provide a signed receipt indicating the date of submission.

Sec. 9. Minnesota Statutes 2002, section 624.714, subdivision 4, is amended to read:

Subd. 4. [INVESTIGATION.] (a) The ~~application authority shall~~ sheriff must check, by means of electronic data transfer, criminal records, histories, and warrant information on each applicant through the Minnesota Crime Information System. ~~The chief of police or sheriff shall~~ and, to the extent necessary, the National Instant Check System. The sheriff shall also make a reasonable effort to check other available and relevant federal, state, or local record keeping systems. The sheriff must obtain commitment information from the commissioner of human services as provided in section 245.041 or, if the information is reasonably available, as provided by a similar statute from another state.

(b) When an application for a permit is filed under this section, the sheriff must notify the chief of police, if any, of the municipality where the applicant resides. The police chief may provide the sheriff with any information relevant to the issuance of the permit.

(c) The sheriff must conduct a background check by means of electronic data transfer on a permit holder through the Minnesota Crime Information System and, to the extent necessary, the National Instant Check System at least yearly to ensure continuing eligibility. The sheriff may conduct additional background checks by means of electronic data transfer on a permit holder at any time during the period that a permit is in effect.

Sec. 10. Minnesota Statutes 2002, section 624.714, subdivision 6, is amended to read:

Subd. 6. [~~FAILURE TO GRANT~~ GRANTING AND DENIAL OF PERMITS.] (a) The sheriff must, within 30 days after the date of receipt of the application packet described in subdivision 3:

(1) issue the permit to carry;

(2) deny the application for a permit to carry solely on the grounds that the applicant failed to qualify under the criteria described in subdivision 2, paragraph (b); or

(3) deny the application on the grounds that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit.

(b) Failure of the ~~chief police officer or the county sheriff to deny the application or issue a permit to carry a pistol~~ notify the applicant of the denial of the application within ~~21~~ 30 days ~~of~~ after the date of receipt of the application ~~shall be deemed to be a grant thereof.~~ packet constitutes issuance of the permit to carry and the sheriff must promptly fulfill the requirements under paragraph (c). To deny the application, the ~~local police authority shall~~ sheriff must provide ~~an~~ the applicant with written notification of a denial

and the specific ~~reason for~~ factual basis justifying the denial under paragraph (a), clause (2) or (3), including the source of the factual basis. The sheriff must inform the applicant of the applicant's right to submit, within 20 business days, any additional documentation relating to the propriety of the denial. A chief of police or a sheriff may charge a fee to cover the cost of conducting a background check, not to exceed \$10. The permit shall specify the activities for which it shall be valid. Upon receiving any additional documentation, the sheriff must reconsider the denial and inform the applicant within 15 business days of the result of the reconsideration. Any denial after reconsideration must be in the same form and substance as the original denial and must specifically address any continued deficiencies in light of the additional documentation submitted by the applicant. The applicant must be informed of the right to seek de novo review of the denial as provided in subdivision 12.

(c) Upon issuing a permit to carry, the sheriff must provide a laminated permit card to the applicant by first class mail unless personal delivery has been made. Within five business days, the sheriff must submit the information specified in subdivision 7, paragraph (a), to the commissioner of public safety for inclusion solely in the database required under subdivision 15, paragraph (a). The sheriff must transmit the information in a manner and format prescribed by the commissioner.

(d) Within five business days of learning that a permit to carry has been suspended or revoked, the sheriff must submit information to the commissioner of public safety regarding the suspension or revocation for inclusion solely in the databases required or permitted under subdivision 15.

(e) Notwithstanding paragraphs (a) and (b), the sheriff may suspend the application process if a charge is pending against the applicant that, if resulting in conviction, will prohibit the applicant from possessing a firearm.

Sec. 11. Minnesota Statutes 2002, section 624.714, subdivision 7, is amended to read:

Subd. 7. [PERMIT CARD CONTENTS; EXPIRATION; RENEWAL.] ~~Permits to carry a pistol issued pursuant to this section shall expire after one year and shall thereafter be renewed in the same manner and subject to the same provisions by which the original permit was obtained, except that all renewed permits must comply with the standards adopted by the commissioner of public safety under section 624.7161.~~ (a) Permits to carry must be on an official, standardized permit card adopted by the commissioner of public safety, containing only the name, residence, and driver's license number or state identification card number of the permit holder, if any.

(b) The permit card must also identify the issuing sheriff and state the expiration date of the permit. The permit card must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder becomes prohibited by law from possessing a firearm.

(c) A permit to carry a pistol issued under this section expires five years after the date of issue. It may be renewed in the same manner and under the same criteria which the original permit was obtained, subject to the following procedures:

(1) no earlier than 90 days prior to the expiration date on the permit, the permit holder may renew the permit by submitting

to the appropriate sheriff the application packet described in subdivision 3 and a renewal processing fee not to exceed the actual and reasonable direct cost of processing the application or \$75, whichever is less. Of this amount, \$5 must be submitted to the commissioner of public safety and deposited into the general fund. The sheriff must process the renewal application in accordance with subdivisions 4 and 6; and

(2) a permit holder who submits a renewal application packet after the expiration date of the permit, but within 30 days after expiration, may renew the permit as provided in clause (1) by paying an additional late fee of \$10.

(d) The renewal permit is effective beginning on the expiration date of the prior permit to carry.

Sec. 12. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 7a. [CHANGE OF ADDRESS; LOSS OR DESTRUCTION OF PERMIT.] (a) Within 30 days after changing permanent address, or within 30 days of having lost or destroyed the permit card, the permit holder must notify the issuing sheriff of the change, loss, or destruction. Failure to provide notification as required by this subdivision is a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) After notice is given under paragraph (a), a permit holder may obtain a replacement permit card by paying \$10 to the sheriff. The request for a replacement permit card must be made on an official, standardized application adopted for this purpose under section 624.7151, and, except in the case of an address change, must include a notarized statement that the permit card has been lost or destroyed.

Sec. 13. Minnesota Statutes 2002, section 624.714, subdivision 8, is amended to read:

Subd. 8. [PERMIT TO CARRY VOIDED.] (a) The permit to carry shall be is void and must be revoked at the time that the holder becomes prohibited by law from possessing a ~~pistol under section 624.713~~ firearm, in which event the holder shall must return the permit card to the issuing sheriff within five business days to the application authority after the holder knows or should know that the holder is a prohibited person. If a permit is revoked under this subdivision, the sheriff must give notice to the permit holder in writing in the same manner as a denial. Failure of the holder to return the permit within the five days is a gross misdemeanor unless the court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

(b) When a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the court must revoke the permit and, if it is available, take possession of it and send it to the issuing sheriff.

(c) The sheriff of the county where the application was submitted, or of the county of the permit holder's current residence, may file a petition with the district court therein, for an order revoking a permit to carry on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall be issued only if the sheriff meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses, including attorney fees.

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(d) A permit revocation must be promptly reported to the issuing sheriff.

Sec. 14. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 8a. [PROSECUTOR'S DUTY.] Whenever a person is charged with an offense that would, upon conviction, prohibit the person from possessing a firearm, the prosecuting attorney must ascertain whether the person is a permit holder under this section. If the person is a permit holder, the prosecutor must notify the issuing sheriff that the person has been charged with a prohibiting offense. The prosecutor must also notify the sheriff of the final disposition of the case.

Sec. 15. Minnesota Statutes 2002, section 624.714, subdivision 10, is amended to read:

Subd. 10. [FALSE REPRESENTATIONS.] A person who gives or causes to be given any false material information in applying for a permit to carry, knowing or having reason to know the information is false, is guilty of a gross misdemeanor.

Sec. 16. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 11a. [EMERGENCY ISSUANCE OF PERMITS.] A sheriff may immediately issue an emergency permit to a person if the sheriff determines that the person is in an emergency situation that may constitute an immediate risk to the safety of the person or someone residing in the person's household. A person seeking an emergency permit must complete an application form and must sign an affidavit describing the emergency situation. An emergency permit applicant does not need to provide evidence of training. An emergency permit is valid for 30 days, may not be renewed, and may be revoked without a hearing. No fee may be charged for an emergency permit. An emergency permit holder may seek a regular permit under subdivision 3 and is subject to the other applicable provisions of this section.

Sec. 17. Minnesota Statutes 2002, section 624.714, subdivision 12, is amended to read:

Subd. 12. [HEARING UPON DENIAL OR REVOCATION.] (a) Any person aggrieved by denial or revocation of a permit to carry may appeal ~~the denial~~ by petition to the district court having jurisdiction over the county or municipality ~~wherein the notification or denial occurred~~ where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter ~~shall~~ must be heard de novo without a jury.

(b) The court must issue written findings of fact and conclusions of law regarding the issues submitted by the parties. The court must issue its writ of mandamus directing that the permit be issued and order other appropriate relief unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented, and incidents for which the applicant was charged and acquitted, may not be considered.

(c) If an applicant is denied a permit on the grounds that the applicant is listed in the criminal gang investigative data system under section 299C.091, the person may challenge the denial, after disclosure under court supervision of the reason for that listing, based on grounds that the person:

(1) was erroneously identified as a person in the data system;

(2) was improperly included in the data system according to the criteria outlined in section 299C.091, subdivision 2, paragraph (b); or

(3) has demonstrably withdrawn from the activities and associations that led to inclusion in the data system.

(d) If the court grants a petition brought under paragraph (a), the court must award the applicant or permit holder reasonable costs and expenses including attorney fees.

Sec. 18. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 12a. [SUSPENSION AS CONDITION OF RELEASE.] The district court may order suspension of the application process for a permit or suspend the permit of a permit holder as a condition of release pursuant to the same criteria as the surrender of firearms under section 629.715. A permit suspension must be promptly reported to the issuing sheriff. If the permit holder has an out-of-state permit recognized under subdivision 16, the court must promptly report the suspension to the commissioner of public safety for inclusion solely in the database under subdivision 15, paragraph (a).

Sec. 19. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 14. [RECORDS.] (a) A sheriff must not maintain records or data collected, made, or held under this section concerning any applicant or permit holder that are not necessary under this section to support a permit that is outstanding or eligible for renewal under subdivision 7, paragraph (b). Notwithstanding section 138.163, sheriffs must completely purge all files and databases by March 1 of each year to delete all information collected under this section concerning all persons who are no longer current permit holders or currently eligible to renew their permit.

(b) Paragraph (a) does not apply to records or data concerning an applicant or permit holder who has had a permit denied or revoked under the criteria established in subdivision 2, paragraph (b), clause (1), or subdivision 6, paragraph (a), clause (3), for a period of six years from the date of the denial or revocation.

Sec. 20. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 15. [COMMISSIONER OF PUBLIC SAFETY; CONTRACTS; DATABASE.] (a) The commissioner of public safety must maintain an automated database of persons authorized to carry pistols under this section that is available 24 hours a day, seven days a week, only to law enforcement agencies, including prosecutors carrying out their duties under subdivision 8a, to verify the validity of a permit.

(b) The commissioner of public safety may maintain a separate automated database of denied applications for permits to carry and of revoked permits that is available only to sheriffs performing their duties under this section containing the date of, the statutory basis for, and the initiating agency for any permit application denied or permit revoked for a period

of six years from the date of the denial or revocation.

(c) The commissioner of public safety may contract with one or more vendors to implement the commissioner's duties under this section.

Sec. 21. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 16. [RECOGNITION OF PERMITS FROM OTHER STATES.] (a) The commissioner of public safety must annually establish and publish a list of other states that have laws governing the issuance of permits to carry weapons that are not substantially similar to this section. The list must be available on the Internet. A person holding a carry permit from a state not on the list may use the license or permit in this state subject to the rights, privileges, and requirements of this section.

(b) Notwithstanding paragraph (a), no license or permit from another state is valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

(c) Any sheriff or police chief may file a petition under subdivision 12 seeking an order suspending or revoking an out-of-state permit holder's authority to carry a pistol in this state on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall only be issued if the petitioner meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses including attorney fees. The petition may be filed in any county in the state where a person holding a license or permit from another state can be found.

(d) The commissioner of public safety must, when necessary, execute reciprocity agreements regarding carry permits with jurisdictions whose carry permits are recognized under paragraph (a).

Sec. 22. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 17. [POSTING; TRESPASS.] (a) A person carrying a firearm on or about his or her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a firearm carried in violation of this subdivision is not subject to forfeiture.

(b) As used in this subdivision, the terms in this paragraph have the meanings given.

(1) "Reasonable request" means a request made under the following circumstances:

(i) the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES."; and

(ii) the requester or its agent personally informs the person of the posted request and demands compliance.

(2) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.

(3) "Conspicuous" means lettering in black arial typeface at least 1-1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(4) "Private establishment" means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

(c) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

(d) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(e) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(f) Notwithstanding any inconsistent provisions in section 609.605, this subdivision sets forth the exclusive criteria to notify a permit holder when otherwise lawful firearm possession is not allowed in a private establishment and sets forth the exclusive penalty for such activity.

(g) This subdivision does not apply to an on-duty peace officer or security guard acting in the course and scope of employment.

Sec. 23. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 18. [EMPLOYERS; PUBLIC COLLEGES AND UNIVERSITIES.] (a) An employer, whether public or private, may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment. Employment related civil sanctions may be invoked for a violation.

(b) A public postsecondary institution regulated under chapter 136F or 137 may establish policies that restrict the carry or possession of firearms by its students while on the institution's property. Academic sanctions may be invoked for a violation.

(c) Notwithstanding paragraphs (a) and (b), an employer or a postsecondary institution may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

Sec. 24. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 19. [IMMUNITY.] Neither a sheriff, police chief, any employee of a sheriff or police chief involved in the permit issuing process, nor any certified instructor is liable for damages resulting or arising from acts with a firearm committed by a permit holder, unless the person had actual knowledge at the time the permit was issued or the instruction was given that the applicant was prohibited by law from possessing a firearm.

Sec. 25. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 20. [MONITORING.] (a) By March 1, 2004, and each year thereafter, the commissioner of public safety must report to the legislature on:

(1) the number of permits applied for, issued, suspended, revoked, and denied, further categorized by the age, sex, and zip code of the applicant or permit holder, since the previous submission, and in total;

(2) the number of permits currently valid;

(3) the specific reasons for each suspension, revocation, and denial and the number of reversed, canceled, or corrected actions;

(4) without expressly identifying an applicant, the number of denials or revocations based on the grounds under subdivision 6, paragraph (a), clause (3), the factual basis for each denial

or revocation, and the result of an appeal, if any, including the court's findings of fact, conclusions of law, and order;

(5) the number of convictions and types of crimes committed since the previous submission, and in total, by individuals with permits including data as to whether a firearm lawfully carried solely by virtue of a permit was actually used in furtherance of the crime;

(6) to the extent known or determinable, data on the lawful and justifiable use of firearms by permit holders; and

(7) the status of the segregated funds reported to the commissioner under subdivision 21.

(b) Sheriffs and police chiefs must supply the department of public safety with the basic data the department requires to complete the report under paragraph (a). Sheriffs and police chiefs may submit data classified as private to the department of public safety under this paragraph.

(c) Copies of the report under paragraph (a) must be made available to the public at the actual cost of duplication.

(d) Nothing contained in any provision of this section or any other law requires or authorizes the registration, documentation, collection, or providing of serial numbers or other data on firearms or on firearms' owners.

Sec. 26. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 21. [USE OF FEES.] Fees collected by sheriffs under this section and not forwarded to the commissioner of public safety must be used only to pay the direct costs of administering this section. Fee money may be used to pay the costs of appeals of prevailing applicants or permit holders under subdivision 8, paragraph (c); subdivision 12, paragraph (e); and subdivision 16, paragraph (c). Fee money may also be used to pay the reasonable costs of the county attorney to represent the sheriff in proceedings under this section. The revenues must be maintained in a segregated fund. Fund balances must be carried over from year to year and do not revert to any other fund. As part of the information supplied under subdivision 20, paragraph (b), by January 31 of each year, a sheriff must report to the commissioner on the sheriff's segregated fund for the preceding calendar year, including information regarding:

- (1) nature and amount of revenues;
- (2) nature and amount of expenditures; and
- (3) nature and amount of balances.

Sec. 27. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 22. [SHORT TITLE; CONSTRUCTION; SEVERABILITY.] This section may be cited as the Minnesota Citizens' Personal Protection Act of 2003. The legislature of the state of Minnesota recognizes and declares that the second amendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test. The invalidation of any provision of this section shall not invalidate any other provision.

Sec. 28. Minnesota Statutes 2002, section 624.714, is amended by adding a subdivision to read:

Subd. 23. [EXCLUSIVITY.] This section sets forth the complete and exclusive criteria and procedures for the issuance

of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law or governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.

Sec. 29. [624.7142] [CARRYING WHILE UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE.]

Subdivision 1. [ACTS PROHIBITED.] A person may not carry a pistol on or about the person's clothes or person in a public place:

- (1) when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;
- (2) when the person is under the influence of a combination of any two or more of the elements named in clauses (1) and (4);
- (3) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to impair the person's clearness of intellect or physical control;
- (4) when the person is under the influence of alcohol;
- (5) when the person's alcohol concentration is 0.10 or more; or
- (6) when the person's alcohol concentration is less than 0.10, but more than 0.04.

Subd. 2. [ARREST.] A peace officer may arrest a person for a violation under subdivision 1 without a warrant upon probable cause, without regard to whether the violation was committed in the officer's presence.

Subd. 3. [PRELIMINARY SCREENING TEST.] When an officer authorized under subdivision 2 to make arrests has reason to believe that the person may be violating or has violated subdivision 1, the officer may require the person to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of the preliminary screening test must be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 624.7143, but may not be used in any court action except: (1) to prove that the test was properly required of a person under section 624.7143, or (2) in a civil action arising out of the use of the pistol. Following the preliminary screening test, additional tests may be required of the person as provided under section 624.7143. A person who refuses a breath sample is subject to the provisions of section 624.7143 unless, in compliance with that section, the person submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. [EVIDENCE.] In a prosecution for a violation of subdivision 1, the admission of evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine is governed by section 169A.45.

Subd. 5. [SUSPENSION.] A person who is charged with a violation under this section may have their authority to carry a pistol in a public place on or about the person's clothes or person under the provisions of a permit or otherwise suspended by the court as a condition of release.

Subd. 6. [PENALTIES.] (a) A person who violates a prohibition under subdivision 1, clauses (1) to (5), is guilty

of a misdemeanor. A second or subsequent violation is a gross misdemeanor.

(b) A person who violates subdivision 1, clause (6), is guilty of a misdemeanor.

(c) In addition to the penalty imposed under paragraph (a), if a person violates subdivision 1, clauses (1) to (5), the person's authority to carry a pistol in a public place on or about the person's clothes or person under the provisions of a permit or otherwise is revoked and the person may not reapply for a period of one year from the date of conviction.

(d) In addition to the penalty imposed under paragraph (b), if a person violates subdivision 1, clause (6), the person's authority to carry a pistol in a public place on or about the person's clothes or person under the provisions of a permit or otherwise is suspended for 180 days from the date of conviction.

(e) Notwithstanding section 609.531, a firearm carried in violation of subdivision 1, clause (6), is not subject to forfeiture.

Subd. 7. [REPORTING.] Suspensions and revocations under this section must be reported in the same manner as in section 624.714, subdivision 12a.

Sec. 30. [624.7143] [CHEMICAL TESTING.]

Subdivision 1. [MANDATORY CHEMICAL TESTING.] A person who carries a pistol in a public place on or about the person's clothes or person is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. The test shall be administered at the direction of an officer authorized to make arrests under section 624.7142. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was carrying a pistol in violation of section 624.7142, and one of the following conditions exists:

(1) the person has been lawfully placed under arrest for violating section 624.7142;

(2) the person has been involved while carrying a firearm in a firearms-related accident resulting in property damage, personal injury, or death;

(3) the person has refused to take the preliminary screening test provided for in section 624.7142; or

(4) the screening test was administered and indicated an alcohol concentration of 0.04 or more.

Subd. 2. [PENALTIES; REFUSAL; REVOCATION.] (a) If a person refuses to take a test required under subdivision 1, none must be given but the officer shall report the refusal to the sheriff and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the incident occurred that gave rise to the test demand and refusal. On certification by the officer that probable cause existed to believe the person had been carrying a pistol on or about the person's clothes or person in a public place while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, a court may impose a civil penalty of \$500 and may revoke the person's authority to carry a pistol in a public place on or about the person's clothes or person under the provisions of a permit or otherwise for a period of one year from the date of the refusal. The person shall be accorded notice and an opportunity to be heard prior to imposition of the civil penalty or the revocation.

(b) Revocations under this subdivision must be reported in

the same manner as in section 624.714, subdivision 12a.

Subd. 3. [RIGHTS AND OBLIGATIONS.] At the time a test is requested, the person must be informed that:

(1) Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

(2) if the person refuses to take the test, the person is subject to a civil penalty of \$500 and is prohibited for a period of one year from carrying a pistol in a public place on or about the person's clothes or person, as provided under subdivision 2; and

(3) that the person has the right to consult with an attorney, but that this right is limited to the extent it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test.

Subd. 4. [REQUIREMENT OF BLOOD OR URINE TEST.] Notwithstanding subdivision 1, if there is probable cause to believe there is impairment by a controlled substance that is not subject to testing by a breath test, a blood or urine test may be required even after a breath test has been administered.

Subd. 5. [CHEMICAL TESTS.] Chemical tests administered under this section are governed by section 169A.51 in all aspects that are not inconsistent with this section.

Sec. 31. [APPROPRIATION.]

\$1,071,000 is appropriated in fiscal year 2004 and \$119,000 is appropriated in fiscal year 2005 from the general fund to the commissioner of public safety to implement the provisions of sections 1 to 30. The unencumbered balance in the first year does not cancel but is available for the second year.

Sec. 32. [TEMPORARY FEE PROVISION.]

Notwithstanding Minnesota Statutes, section 624.714, subdivision 3, paragraph (e), until July 1, 2004, the sheriff must submit \$21.50 to the commissioner of public safety for deposit into the general fund for each permit application submitted under Minnesota Statutes, section 624.714.

Sec. 33. [GRANDFATHER CLAUSE.]

Permits to carry pistols issued prior to the effective date of sections 1 to 30 remain in effect and are valid under the terms of issuance until the date of expiration applicable at the time of issuance. However, a person holding a permit that was issued prior to the effective date of sections 1 to 30 may nevertheless apply for a permit under the terms and conditions of sections 1 to 30.

Sec. 34. [REVISOR'S INSTRUCTION.]

In Minnesota Statutes, sections 624.713 to 624.717, the revisor of statutes shall change the term "commissioner of public safety" to "commissioner" wherever the term appears.

Sec. 35. [REPEALER.]

Minnesota Statutes 2002, section 624.714, subdivisions 1 and 5, are repealed.

Sec. 36. [EFFECTIVE DATE.]

Sections 1 to 35 are effective 30 days after final enactment and apply to crimes committed on or after that date, except that the commissioner of public safety must promulgate the list required under section 21 within 60 days of final enactment. The database required by section 20 must be operational within 180 days of the effective date.

ARTICLE 3

LIFETIME BAN ON FIREARM POSSESSION FOR VIOLENT FELONS

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Section 1. Minnesota Statutes 2002, section 242.31, subdivision 2a, is amended to read:

Subd. 2a. [CRIMES OF VIOLENCE; INELIGIBILITY TO POSSESS FIREARMS.] The order of discharge must provide that a person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm ~~until ten years have elapsed since the person was restored to civil rights and during that time the person was not convicted of any other crime of violence for the remainder of the person's lifetime.~~ Any person who has received such a discharge and who thereafter has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, shall not be subject to the restrictions of this subdivision.

Sec. 2. Minnesota Statutes 2002, section 260B.245, subdivision 1, is amended to read:

Subdivision 1. [EFFECT.] (a) No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime, except as otherwise provided in this section or section 260B.255. An extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the sentencing guidelines. The disposition of the child or any evidence given by the child in the juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court, except that an adjudication may later be used to determine a proper sentence, nor shall the disposition or evidence disqualify the child in any future civil service examination, appointment, or application.

(b) A person who was adjudicated delinquent for, or convicted as an extended jurisdiction juvenile of, a crime of violence as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm ~~until ten years have elapsed since the person was discharged and during that time the person was not convicted of any other crime of violence for the remainder of the person's lifetime.~~ A person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restrictions of this subdivision.

Sec. 3. Minnesota Statutes 2002, section 609.165, subdivision 1a, is amended to read:

Subd. 1a. [CERTAIN CONVICTED FELONS INELIGIBLE TO POSSESS FIREARMS.] The order of discharge must provide that a person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm ~~until ten years have elapsed since the person was restored to civil rights and during that time the person was not convicted of any other crime of violence for the remainder of the person's lifetime.~~ Any person who has received such a discharge and who thereafter has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under subdivision 1d, shall not be subject to the restrictions of this subdivision.

Sec. 4. Minnesota Statutes 2002, section 609.165,

subdivision 1b, is amended to read:

Subd. 1b. [VIOLATION AND PENALTY.] (a) Any person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, and who ships, transports, possesses, or receives a firearm ~~before ten years have elapsed since the person was restored to civil rights~~, commits a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

(b) ~~Nothing in this~~ A conviction and sentencing under this section shall be construed to bar a conviction and sentencing for a violation of section 624.713, subdivision 2.

(c) ~~The criminal penalty in paragraph (a) does not apply to any person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under subdivision 1d.~~

Sec. 5. Minnesota Statutes 2002, section 609.165, is amended by adding a subdivision to read:

Subd. 1d. [JUDICIAL RESTORATION OF ABILITY TO POSSESS A FIREARM BY A FELON.] A person prohibited by state law from shipping, transporting, possessing, or receiving a firearm because of a conviction or a delinquency adjudication for committing a crime of violence may petition a court to restore the person's ability to possess, receive, ship, or transport firearms and otherwise deal with firearms.

The court may grant the relief sought if the person shows good cause to do so and the person has been released from physical confinement.

If a petition is denied, the person may not file another petition until three years have elapsed without the permission of the court.

Sec. 6. Minnesota Statutes 2002, section 609A.03, subdivision 5a, is amended to read:

Subd. 5a. [ORDER CONCERNING CRIMES OF VIOLENCE.] An order expunging the record of a conviction for a crime of violence as defined in section 624.712, subdivision 5, must provide that the person is not entitled to ship, transport, possess, or receive a firearm ~~until ten years have elapsed since the order was entered and during that time the person was not convicted of any other crime of violence~~ for the remainder of the person's lifetime. Any person whose record of conviction is expunged under this section and who thereafter receives a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

Sec. 7. Minnesota Statutes 2002, section 624.712, subdivision 5, is amended to read:

Subd. 5. [CRIME OF VIOLENCE.] "Crime of violence" ~~includes murder in the first, second, and third degrees, manslaughter in the first and second degrees, aiding suicide, aiding attempted suicide, felony violations of assault in the first, second, third, and fourth degrees, assaults motivated by bias under section 609.2231, subdivision 4, drive-by shootings, terroristic threats, use of drugs to injure or to facilitate crime, crimes committed for the benefit of a gang, commission of a crime while wearing or possessing a bullet-resistant vest, simple robbery, aggravated robbery, kidnapping, false imprisonment, criminal sexual conduct in the first, second, third, and fourth degrees, theft of a firearm, felony theft involving the intentional taking or driving of a motor vehicle without the consent of the~~

~~owner or the authorized agent of the owner, felony theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle, felony theft involving the theft of a controlled substance, an explosive, or an incendiary device, arson in the first and second degrees, riot, burglary in the first, second, third, and fourth degrees, harassment and stalking, shooting at a public transit vehicle or facility, reckless use of a gun or dangerous weapon, intentionally pointing a gun at or towards a human being, setting a spring gun, and unlawfully owning, possessing, operating a machine gun or short-barreled shotgun, and an attempt to commit any of these offenses, as each of these offenses is defined in chapter 609. "Crime of violence" also includes felony violations of the following: malicious punishment of a child; neglect or endangerment of a child; and chapter 152. means: felony convictions of the following offenses: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.215 (aiding suicide and aiding attempted suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.229 (crimes committed for the benefit of a gang); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.486 (commission of crime while wearing or possessing a bullet-resistant vest); 609.52 (involving theft of a firearm, theft involving the intentional taking or driving of a motor vehicle without the consent of the owner or authorized agent of the owner, theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle, and theft involving the theft of a controlled substance, an explosive, or an incendiary device); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.582, subdivision 1, 2, or 3 (burglary in the first through third degrees); 609.66, subdivision 1e (drive-by shooting); 609.67 (unlawfully owning, possessing, operating a machine gun or short-barreled shotgun); 609.71 (riot); 609.713 (terroristic threats); 609.749 (harassment and stalking); 609.855, subdivision 5 (shooting at a public transit vehicle or facility); and chapter 152 (drugs, controlled substances); and an attempt to commit any of these offenses.~~

Sec. 8. Minnesota Statutes 2002, section 624.713, subdivision 1, is amended to read:

Subdivision 1. [INELIGIBLE PERSONS.] The following persons shall not be entitled to possess a pistol or semiautomatic military-style assault weapon or, except for clause (a), any other firearm:

(a) a person under the age of 18 years except that a person under 18 may carry or possess a pistol or semiautomatic military-style assault weapon (i) in the actual presence or

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under the direct supervision of the person's parent or guardian, (ii) for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision, (iii) for the purpose of instruction, competition, or target practice on a firing range approved by the chief of police or county sheriff in whose jurisdiction the range is located and under direct supervision; or (iv) if the person has successfully completed a course designed to teach marksmanship and safety with a pistol or semiautomatic military-style assault weapon and approved by the commissioner of natural resources;

(b) except as otherwise provided in clause (i), a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence ~~unless ten years have elapsed since the person has been restored to civil rights or the sentence or disposition has expired, whichever occurs first, and during that time the person has not been convicted of or adjudicated for any other crime of violence.~~ For purposes of this section, crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state;

(c) a person who is or has ever been confined in Minnesota or elsewhere as a person who is mentally ill, mentally retarded, or mentally ill and dangerous to the public, as defined in section 253B.02, to a treatment facility, or who has ever been found incompetent to stand trial or not guilty by reason of mental illness, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof that the person is no longer suffering from this disability;

(d) a person who has been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor violation of chapter 152, or a person who is or has ever been hospitalized or committed for treatment for the habitual use of a controlled substance or marijuana, as defined in sections 152.01 and 152.02, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof, that the person has not abused a controlled substance or marijuana during the previous two years;

(e) a person who has been confined or committed to a treatment facility in Minnesota or elsewhere as chemically dependent as defined in section 253B.02, unless the person has completed treatment. Property rights may not be abated but access may be restricted by the courts;

(f) a peace officer who is informally admitted to a treatment facility pursuant to section 253B.04 for chemical dependency, unless the officer possesses a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility. Property rights may not be abated but access may be restricted by the courts;

(g) a person, including a person under the jurisdiction of the juvenile court, who has been charged with committing a crime of violence and has been placed in a pretrial diversion program by the court before disposition, until the person has completed the diversion program and the charge of committing the crime of violence has been dismissed;

(h) except as otherwise provided in clause (i), a person who has been convicted in another state of committing an offense similar to the offense described in section 609.224, subdivision

3, against a family or household member or section 609.2242, subdivision 3, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of section 609.224, subdivision 3, or 609.2242, subdivision 3, or a similar law of another state;

(i) a person who has been convicted in this state or elsewhere of assaulting a family or household member and who was found by the court to have used a firearm in any way during commission of the assault is prohibited from possessing any type of firearm for the period determined by the sentencing court; ~~or~~

(j) a person who:

(1) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding;

(3) is an unlawful user of any controlled substance as defined in chapter 152;

(4) has been judicially committed to a treatment facility in Minnesota or elsewhere as a person who is mentally ill, mentally retarded, or mentally ill and dangerous to the public, as defined in section 253B.02;

(5) is an alien who is illegally or unlawfully in the United States;

(6) has been discharged from the armed forces of the United States under dishonorable conditions; or

(7) has renounced the person's citizenship having been a citizen of the United States; or

(k) a person who has been convicted of the following offenses at the gross misdemeanor level, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of these sections: section 609.229 (crimes committed for the benefit of a gang); 609.2231, subdivision 4 (assaults motivated by bias); 609.255 (false imprisonment); 609.378 (neglect or endangerment of a child); 609.582, subdivision 4 (burglary in the fourth degree); 609.665 (setting a spring gun); 609.71 (riot); or 609.749 (harassment and stalking). For purposes of this paragraph, the specified gross misdemeanor convictions include crimes committed in other states or jurisdictions which would have been gross misdemeanors if conviction occurred in this state.

A person who issues a certificate pursuant to this subdivision in good faith is not liable for damages resulting or arising from the actions or misconduct with a firearm committed by the individual who is the subject of the certificate.

The prohibition in this subdivision relating to the possession of firearms other than pistols and semiautomatic military-style assault weapons does not apply retroactively to persons who are prohibited from possessing a pistol or semiautomatic military-style assault weapon under this subdivision before August 1, 1994.

The lifetime prohibition on possessing, receiving, shipping, or transporting firearms for persons convicted or adjudicated delinquent of a crime of violence in clause (b), applies only to offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993.

Sec. 9. Minnesota Statutes 2002, section 624.713,

subdivision 2, is amended to read:

Subd. 2. [PENALTIES.] (a) A person named in subdivision 1, clause (a), who possesses a pistol or semiautomatic military-style assault weapon is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) A person named in subdivision 1, clause (b), who possesses any type of firearm is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both. This paragraph does not apply to any person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d.

(c) A person named in any other clause of subdivision 1 who possesses any type of firearm is guilty of a gross misdemeanor.

Sec. 10. Minnesota Statutes 2002, section 624.713, subdivision 3, is amended to read:

Subd. 3. [NOTICE.] (a) When a person is convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, a crime of violence as defined in section 624.712, subdivision 5, the court shall inform the defendant that the defendant is prohibited from possessing a pistol or semiautomatic military-style assault weapon for a ~~period of ten years after the person was restored to civil rights or since the sentence or disposition has expired, whichever occurs first the remainder of the person's lifetime,~~ and that it is a felony offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol or semiautomatic military-style assault weapon possession prohibition or the felony penalty to that defendant.

(b) When a person, including a person under the jurisdiction of the juvenile court, is charged with committing a crime of violence and is placed in a pretrial diversion program by the court before disposition, the court shall inform the defendant that: (1) the defendant is prohibited from possessing a pistol or semiautomatic military-style assault weapon until the person has completed the diversion program and the charge of committing a crime of violence has been dismissed; (2) it is a gross misdemeanor offense to violate this prohibition; and (3) if the defendant violates this condition of participation in the diversion program, the charge of committing a crime of violence may be prosecuted. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol or semiautomatic military-style assault weapon possession prohibition or the gross misdemeanor penalty to that defendant.

Sec. 11. Minnesota Statutes 2002, section 638.02, subdivision 2, is amended to read:

Subd. 2. Any person, convicted of a crime in any court of this state, who has served the sentence imposed by the court and has been discharged of the sentence either by order of court or by operation of law, may petition the board of pardons for the granting of a pardon extraordinary. Unless the board of pardons expressly provides otherwise in writing by unanimous vote, the application for a pardon extraordinary may not be filed until the applicable time period in clause (1) or (2) has elapsed:

(1) if the person was convicted of a crime of violence as defined in section 624.712, subdivision 5, ten years must have

elapsed since the sentence was discharged and during that time the person must not have been convicted of any other crime; and
(2) if the person was convicted of any crime not included within the definition of crime of violence under section 624.712, subdivision 5, five years must have elapsed since the sentence was discharged and during that time the person must not have been convicted of any other crime.

If the board of pardons determines that the person is of good character and reputation, the board may, in its discretion, grant the person a pardon extraordinary. The pardon extraordinary, when granted, has the effect of setting aside and nullifying the conviction and of purging the person of it, and the person shall never after that be required to disclose the conviction at any time or place other than in a judicial proceeding or as part of the licensing process for peace officers.

The application for a pardon extraordinary, the proceedings to review an application, and the notice requirements are governed by the statutes and the rules of the board in respect to other proceedings before the board. The application shall contain any further information that the board may require.

~~Unless the board of pardons expressly provides otherwise in writing by unanimous vote, if the person was convicted of a crime of violence, as defined in section 624.712, subdivision 5, the pardon extraordinary must expressly provide that the pardon does not entitle the person to ship, transport, possess, or receive a firearm until ten years have elapsed since the sentence was discharged and during that time the person was not convicted of any other crime of violence.~~

Sec. 12. [EFFECTIVE DATE.]

Sections 1 to 11 are effective August 1, 2003. The provisions of sections 1 to 11 that impose a lifetime prohibition on possessing, receiving, shipping, or transporting firearms apply to persons who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993.

Presented to the governor April 28, 2003

Signed by the governor April 28, 2003, 9:10 p.m.

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