

exchanging information with other states regarding disciplinary actions against licensees. The procedures must provide for the collection of information from other states about disciplinary actions taken against persons who are licensed to practice in Minnesota or who have applied to be licensed in this state and the dissemination of information to other states regarding disciplinary actions taken in Minnesota. In addition to any authority in chapter 13 permitting the dissemination of data, the board may, in its discretion, disseminate data to other states regardless of its classification under chapter 13. Before transferring any data that is not public, the board shall obtain reasonable assurances from the receiving state that the data will not be made public.

Sec. 34. Minnesota Statutes 1994, section 214.103, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION.** For purposes of this section, "board" means "health-related licensing board" and does not include the alcohol and drug counselors licensing advisory council established pursuant to section 148C.02, or the non-health-related licensing boards. Nothing in this section supersedes section 214.10, subdivisions 2a, 3, 8, and 9, as they apply to the health-related licensing boards.

Sec. 35. **REPEALER.**

Minnesota Statutes 1994, sections 148B.62; 148C.01, subdivision 8; 148C.03, subdivisions 2 and 3; 148C.035; 148C.09, subdivision 3; and 153A.19, subdivision 1, are repealed.

Minnesota Rules, chapters 4692; and 4745, are repealed.

Sec. 36. **EFFECTIVE DATE.**

Sections 1 to 34 are effective the day following final enactment.

Presented to the governor May 12, 1995

Signed by the governor May 15, 1995, 10:10 a.m.

CHAPTER 165—H.F.No. 1037

An act relating to health; providing rulemaking authority; modifying enforcement and fee provisions; modifying the hearing instrument dispenser trainee period; providing penalties; amending Minnesota Statutes 1994, sections 144.414, subdivision 3; 144.417, subdivision 1; 144.98, subdivision 3; 144.99, subdivisions 1, 4, 6, 8, and 10; 144.991, subdivision 5; 326.71, subdivision 4; 326.75, subdivision 3a; and 326.78, subdivisions 2 and 9; proposing coding for new law in Minnesota Statutes, chapters 144; and 157; repealing Minnesota Statutes 1994, sections 144.877, subdivision 5; and 144.8781, subdivision 4; Laws 1993, chapter 286, section 11; Minnesota Rules, part 4620.1500.

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

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

Section 1. [144.1222] **PUBLIC POOLS; ENCLOSED SPORTS ARENAS.**

Subdivision 1. PUBLIC POOLS. The commissioner of health shall be responsible for the adoption of rules and enforcement of applicable laws and rules relating to the operation, maintenance, design, installation, and construction of public pools and facilities related to them. The commissioner shall adopt rules governing the collection of fees under section 144.122 to cover the cost of pool construction plan review, monitoring, and inspections.

Subd. 2. POOLS USED FOR TREATMENT OR THERAPY. A pool used by a medical or rehabilitation facility to facilitate treatment or therapy, to which only authorized access is allowed and which is not open for any other public use, is exempt from the requirements of Minnesota Rules, part 4717.1050, regarding warning signs, and Minnesota Rules, part 4717.1650, subpart 1, regarding placards.

Subd. 3. ENCLOSED SPORTS ARENAS. The commissioner of health shall be responsible for the adoption of rules and enforcement of applicable laws and rules relating to indoor air quality in the operation and maintenance of enclosed sports arenas.

Sec. 2. Minnesota Statutes 1994, section 144.414, subdivision 3, is amended to read:

Subd. 3. **HEALTH CARE FACILITIES AND CLINICS.** (a) Smoking is prohibited in any area of a hospital, health care clinic, doctor's office, or other health care-related facility, other than a nursing home, boarding care facility, or licensed residential facility, except as allowed in this subdivision.

(b) Smoking by patients in a chemical dependency treatment program or mental health program may be allowed in a separated well-ventilated area pursuant to a policy established by the administrator of the program that identifies circumstances in which prohibiting smoking would interfere with the treatment of persons recovering from chemical dependency or mental illness.

(c) Smoking by participants in peer reviewed scientific studies related to the health effects of smoking may be allowed in a separated room ventilated at a rate of 60 cubic feet per minute per person pursuant to a policy that is approved by the commissioner and is established by the administrator of the program to minimize exposure of nonsmokers to smoke.

Sec. 3. Minnesota Statutes 1994, section 144.417, subdivision 1, is amended to read:

Subdivision 1. **RULES.** The state commissioner of health shall adopt rules necessary and reasonable to implement the provisions of sections 144.411 to 144.417, except as provided for in section 144.414.

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

The state commissioner of health may, upon request, waive the provisions of sections 144.411 to 144.417 if the commissioner determines there are compelling reasons to do so and a waiver will not significantly affect the health and comfort of nonsmokers.

Sec. 4. Minnesota Statutes 1994, section 144.98, subdivision 3, is amended to read:

Subd. 3. **FEES.** (a) An application for certification under subdivision 1 must be accompanied by the ~~annual~~ biennial fee specified in this subdivision. The fees are for:

- (1) base certification fee, ~~\$250~~ \$500; and
- (2) test category certification fees:

Test Category	Certification Fee
Bacteriology	\$100 <u>\$200</u>
Inorganic chemistry, fewer than four constituents	\$ 50 <u>\$100</u>
Inorganic chemistry, four or more constituents	\$150 <u>\$300</u>
Chemistry metals, fewer than four constituents	\$100 <u>\$200</u>
Chemistry metals, four or more constituents	\$250 <u>\$500</u>
Volatile organic compounds	\$300 <u>\$600</u>
Other organic compounds	\$300 <u>\$600</u>

(b) The total ~~annual~~ biennial certification fee is the base fee plus the applicable test category fees. The ~~annual~~ biennial certification fee for a contract laboratory is 1.5 times the total certification fee.

(c) Laboratories located outside of this state that require an on-site survey will be assessed an additional \$1,200 fee.

(d) The commissioner of health may adjust fees under section 16A.128, subdivision 2. Fees must be set so that the total fees support the laboratory certification program. Direct costs of the certification service include program administration, inspections, the agency's general support costs, and attorney general costs attributable to the fee function.

Sec. 5. Minnesota Statutes 1994, section 144.99, subdivision 1, is amended to read:

Subdivision 1. **REMEDIES AVAILABLE.** The provisions of chapters 1031 and 157 and sections 115.71 to 115.82; 144.12, subdivision 1, paragraphs (1), (2), (5), (6), (10), (12), (13), (14), and (15); 144.121; 144.122; 144.35; 144.381 to 144.385; 144.411 to 144.417; 144.491; 144.495; 144.71 to 144.74; 144.871 to ~~144.878~~ 144.879; 144.992; 326.37 to 326.45; 326.57 to 326.785; 327.10 to 327.131; and 327.14 to 327.28 and all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted or issued by the department or under any other law now in force or later enacted for the preservation of public health may, in addition to provisions in other statutes, be enforced under this section.

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

Sec. 6. Minnesota Statutes 1994, section 144.99, subdivision 4, is amended to read:

Subd. 4. **ADMINISTRATIVE PENALTY ORDERS.** The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of the statutes, rules, and other actions listed in subdivision 1. The procedures in section 144.991 must be followed when issuing administrative penalty orders. Except in the case of repeated or serious violations, the penalty assessed in the order must be forgiven if the person who is subject to the order demonstrates in writing to the commissioner before the 31st day after receiving the order that the person has corrected the violation or has developed a corrective plan acceptable to the commissioner. The maximum amount of an administrative penalty order ~~order~~ is \$10,000 for each violator for all violations by that violator identified in an inspection or review of compliance.

Sec. 7. Minnesota Statutes 1994, section 144.99, subdivision 6, is amended to read:

Subd. 6. **CEASE AND DESIST.** The commissioner, or an employee of the department designated by the commissioner, may issue an order to cease an activity covered by subdivision 1 if continuation of the activity would result in an immediate risk to public health. An order issued under this paragraph is effective for a maximum of 72 hours. In conjunction with the issuance of the cease and desist order, the commissioner may post a sign to cease an activity until the cease and desist order is lifted and the sign is removed by the commissioner. The commissioner must seek an injunction or take other administrative action authorized by law to restrain activities for a period beyond 72 hours. The issuance of a cease and desist order does not preclude the commissioner from pursuing any other enforcement action available to the commissioner.

Sec. 8. Minnesota Statutes 1994, section 144.99, subdivision 8, is amended to read:

Subd. 8. **DENIAL OR REFUSAL TO REISSUE PERMITS, LICENSES, REGISTRATIONS, OR CERTIFICATES.** (a) The commissioner may deny or refuse to renew an application for a permit, license, registration, or certificate required under the statutes or rules cited in subdivision 1, if the applicant does not meet or fails to maintain the minimum qualifications for holding a permit, license, registration, or certificate or has any unresolved violations related to the activity for which the permit, license, registration, or certificate was issued.

(b) The commissioner may also deny or refuse to renew a permit, license, registration, or certificate required under the statutes or rules cited in subdivision 1 if the applicant has a persistent pattern of violations related to the permit, license, registration, or certificate, or if the applicant submitted false material information to the department in connection with the application.

(c) The commissioner may condition the grant or renewal of a permit,

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license, registration, or certificate on a demonstration by the applicant that actions needed to ensure compliance with the requirements of the statutes listed in subdivision 1 have been taken, or may place conditions on or issue a limited permit, license, registration, or certificate as a result of previous violations by the applicant.

Sec. 9. Minnesota Statutes 1994, section 144.99, subdivision 10, is amended to read:

Subd. 10. **HEARINGS RELATED TO DENIAL, REFUSAL TO RENEW, SUSPENSION, OR REVOCATION OF A PERMIT, LICENSE, REGISTRATION, OR CERTIFICATE.** If the commissioner proposes to deny, refuses to renew, suspends, or revokes a permit, license, registration, or certificate under subdivision 8 or 9, the commissioner must first notify, in writing, the person against whom the action is proposed to be taken and provide the person an opportunity to request a hearing under the contested case provisions of chapter 14. If the person does not request a hearing by notifying the commissioner within 20 days after receipt of the notice of proposed action, the commissioner may proceed with the action without a hearing.

Sec. 10. Minnesota Statutes 1994, section 144.991, subdivision 5, is amended to read:

Subd. 5. **EXPEDITED ADMINISTRATIVE HEARING.** (a) Within 30 days after receiving an order or within 20 days after receiving notice that the commissioner has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may request an expedited hearing, ~~utilizing~~ using the procedures of Minnesota Rules, parts 1400.8510 to 1400.8612, to review the commissioner's action. The hearing request must specifically state the reasons for seeking review of the order. The person to whom the order is directed and the commissioner are the parties to the expedited hearing. The commissioner must notify the person to whom the order is directed of the time and place of the hearing at least 20 ~~15~~ days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the commissioner unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The office of administrative hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making recommendations about the commissioner's action to the commissioner within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that, based on the factors in subdivision ~~2~~ 1, the amount of the penalty is unreasonable.

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(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add to the amount of the penalty the costs charged to the agency by the office of administrative hearings for the hearing.

(e) If a hearing has been held, the commissioner may not issue a final order until at least five days after receipt of the report of the administrative law judge. The person to whom an order is issued may, within those five days, comment to the commissioner on the recommendations and the commissioner will consider the comments. The final order may be appealed in the manner provided in sections 14.63 to 14.69.

(f) If a hearing has been held and a final order issued by the commissioner, the penalty shall be paid by 30 days after the date the final order is received unless review of the final order is requested under sections 14.63 to 14.69. If review is not requested or the order is reviewed and upheld, the amount due is the penalty, together with interest accruing from 31 days after the original order was received at the rate established in section 549.09.

Sec. 11. **[157.011] RULES.**

Subdivision 1. ESTABLISHMENTS. The commissioner shall adopt rules establishing standards for food, beverage, and lodging establishments.

Subd. 2. CERTIFICATION OF FOOD SERVICE MANAGERS. The commissioner shall:

(1) adopt rules for certification requirements for managers of food service operations; and

(2) establish in rule, criteria for training and certification.

Sec. 12. Minnesota Statutes 1994, section 326.71, subdivision 4, is amended to read:

Subd. 4. **ASBESTOS-RELATED WORK.** "Asbestos-related work" means the enclosure, removal, or encapsulation of asbestos-containing material in a quantity that meets or exceeds 260 lineal feet of friable asbestos-containing material on pipes, 160 square feet of friable asbestos-containing material on other facility components, or, if linear feet or square feet cannot be measured, a total of 35 cubic feet of friable asbestos-containing material on or off all facility components in one facility. In the case of single or multifamily residences, "asbestos-related work" also means the enclosure, removal, or encapsulation of greater than ten but less than 260 lineal feet of friable asbestos-containing material on pipes or ducts or greater than six but less than 160 square feet of friable asbestos-containing material on other facility components. This provision excludes asbestos-containing floor tiles and sheeting, roofing materials, siding, and all ceilings with asbestos-containing material in single family residences and buildings with no more than four dwelling units. Asbestos-related work includes

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asbestos abatement area preparation; enclosure, removal, encapsulation, or repair operations; and an air quality monitoring specified in rule to assure that the abatement and adjacent areas are not contaminated with asbestos fibers during the project and after completion.

For purposes of this subdivision, the quantity of asbestos containing material applies separately for every project ~~permit fee paid under section 326.75; subdivision 3.~~

Sec. 13. Minnesota Statutes 1994, section 326.75, subdivision 3a, is amended to read:

Subd. 3a. **ASBESTOS-RELATED TRAINING COURSE PERMIT FEE.** The commissioner shall establish by rule a permit fee to be paid by a training course provider ~~upon~~ on application for ~~approval or renewal of approval~~ a training course permit or renewal of a permit of each asbestos-related training course required for certification or registration.

Sec. 14. Minnesota Statutes 1994, section 326.78, subdivision 2, is amended to read:

Subd. 2. **ISSUANCE OF LICENSES AND CERTIFICATES.** The commissioner may issue licenses to persons and certificates to individuals who meet the criteria in sections 326.70 to 326.82 and the commissioner's rules. Licenses ~~and certificates~~ shall be valid for ~~at least 12 months; except that the initial certificate will be issued to expire one year.~~ Certificates shall be valid for 12 months after the completion date on the approved training course diploma.

Sec. 15. Minnesota Statutes 1994, section 326.78, subdivision 9, is amended to read:

Subd. 9. **PENALTIES.** (a) A person who violates any of the requirements of sections 326.70 to 326.81 or any requirement, rule, or order issued under those sections is subject to a civil penalty of not more than \$10,000 per day of violation. Penalties may be recovered in a civil action in the name of the state brought by the attorney general.

(b) ~~The commissioner may issue an order assessing a penalty of not more than \$10,000 per violation to any person who violates any of the requirements of sections 326.70 to 326.81 or any requirement, rule, or order issued under those sections. A person subject to an administrative penalty order may request a contested case hearing under chapter 14 within 20 days from date of receipt of the penalty order. If the penalty order is not contested within 20 days of receipt, it becomes final and may not be contested.~~

(c) ~~The amount of the penalty shall be based on the past history of same or similar violations; the severity of violation; the culpability of the person; and other relevant factors. The history of past violations shall include previous violations received by the person licensed as a different entity.~~

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(d) Penalties assessed under sections 326.70 to 326.81 shall be paid to the commissioner for deposit in the state government special revenue fund. Unpaid penalties shall be increased to 125 percent of the original assessed amount if not paid within 60 days after the penalty order becomes final. After 60 days, interest shall accrue on the unpaid penalty balance at the rate established in section 549.09.

Sec. 16. EXTENSION OF HEARING INSTRUMENT DISPENSER TRAINEE PERIOD.

Notwithstanding Minnesota Statutes, section 153A.14, subdivision 4a, paragraph (a), a person approved by the commissioner of health as a hearing instrument dispenser trainee after July 1, 1994, and before December 1, 1994, may continue to dispense hearing instruments as a trainee until November 1, 1995.

Sec. 17. REPEALER.

Minnesota Statutes 1994, sections 144.877, subdivision 5; and 144.8781, subdivision 4, are repealed. Laws 1993, chapter 286, section 11, is repealed. Minnesota Rules, part 4620.1500, is repealed.

Sec. 18. EFFECTIVE DATE.

Section 16 is effective the day following final enactment.

Presented to the governor May 12, 1995

Signed by the governor May 15, 1995, 10:06 a.m.

CHAPTER 166—S.F.No. 870

An act relating to elevator safety; changing responsibility for certain administrative and enforcement activities; changing certain exemptions; imposing penalties; amending Minnesota Statutes 1994, sections 16B.61, subdivisions 1 and 1a; 16B.72; 16B.73; 183.351, subdivisions 2 and 5; 183.353; 183.354; 183.355, subdivisions 1, 3, and by adding a subdivision; 183.357, subdivisions 1 and 3; 183.358; and 326.244, subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 183.

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

Section 1. Minnesota Statutes 1994, section 16B.61, subdivision 1, is amended to read:

Subdivision 1. **ADOPTION OF CODE.** Subject to sections 16B.59 to ~~16B.73~~ 16B.75, the commissioner shall by rule establish a code of standards for the construction, reconstruction, alteration, and repair of state-owned buildings, governing matters of structural materials, design and construction, fire protec-

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