

A bill for an act
relating to courts; modifying the composition and powers of the Board of Judicial
Standards; modifying presumptions in ascertaining legislative intent; amending
Minnesota Statutes 2008, sections 490A.01; 490A.02; 645.17.

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

Section 1. Minnesota Statutes 2008, section 490A.01, is amended to read:

490A.01 BOARD ON JUDICIAL STANDARDS; ESTABLISHMENT.

Subdivision 1. **Establishment; composition.** The Board on Judicial Standards is
established. ~~The board is a continuation of the board established by Laws 1971, chapter~~
~~909, sections 1 and 2, as amended pursuant to the Minnesota Constitution, article VI,~~
section 9.

Subd. 2. **Composition; appointment.** (a) The board consists of ~~one judge of the~~
~~Court of Appeals, three trial court judges, two lawyers who have practiced law in the state~~
~~for at least ten years, and four citizens who are not judges, retired judges, or lawyers~~
eight citizens of the state of Minnesota, one member of the house of representatives,
and one member of the senate.

(b) ~~All members must be appointed by the governor with the advice and consent~~
~~of the senate. Senate confirmation is not required for judicial members~~ A person who is
a resident and citizen of the state and nation may apply to the secretary of state to be a
citizen member of the board. The secretary of state must conduct a random selection from
qualified citizen applicants. The citizen members shall appoint the members from the
house of representatives and the senate.

Subd. 3. **Term maximum; membership termination.** No member may serve ~~more~~
~~than two full four-year terms or their equivalent~~ if there is a conflict of interest, such as a

member earning income from activities within the judicial branch. If there is a question of whether there is a conflict of interest, the board members shall resolve the conflict with a majority vote. Membership terminates if a member ceases to hold the position that qualified the member for appointment.

Subd. 4. **Member terms; compensation; removal.** The membership terms, compensation, removal of members, and filling of vacancies on the board are as provided in ~~section 15.0575~~; this section. Membership on the board is a full-time position and compensation to the citizen members shall be equal to the compensation paid a justice for the Supreme Court. The legislative members shall be compensated only for their time on the board when the legislature is not in session. The compensation for the legislative member is one-half the salary of a justice for the Supreme Court. The term of membership for the citizens is two years, after which time a citizen member may reapply and be again included in the pool. The term of membership of the legislative members is at the discretion of the citizen members who appoint them. Membership on the board constitutes a valuable service to the citizens of Minnesota; thus, an employer of a board member shall grant the board member extended unpaid leave of absence while the member serves on the board if the board member makes a written request to the employer. The legislature shall provide office space, phones, and necessary office equipment for the board.

Subd. 5. **Executive secretary appointment; salary.** (a) The board shall appoint the executive secretary.

(b) The salary of the executive secretary of the board is 85 percent of the maximum salary provided for an administrative law judge under section 15A.083, subdivision 6a.

Sec. 2. Minnesota Statutes 2008, section 490A.02, is amended to read:

490A.02 JUDICIAL STANDARDS BOARD; POWERS.

Subdivision 1. **Judicial disqualification.** A judge is disqualified from acting as a judge, without a loss of salary, while there is pending an indictment or any information charging the judge with a crime that is punishable as a felony under either Minnesota law or federal law, ~~or while there is pending a recommendation to the Supreme Court by the Board on Judicial Standards for the judge's removal or retirement.~~

Subd. 2. **Judicial suspension.** ~~On receipt of a recommendation of the Board on Judicial Standards or on its own motion, the Supreme Court may suspend~~ A judge is suspended from office without salary when the judge pleads guilty to or no contest to or is found guilty of a crime that is punishable as a felony under either Minnesota law or federal law or any other crime that involves moral turpitude. If the conviction is reversed, the suspension terminates and the judge must be paid a salary for the period of suspension.

If the judge is suspended and the conviction becomes final, the ~~Supreme Court judge~~ shall ~~remove the judge~~ be removed from office.

Subd. 3. **Judicial disability.** On receipt of a recommendation of the Board on Judicial Standards, the ~~Supreme Court legislature~~ may retire a judge for a physical or mental disability that the court determines seriously interferes with the performance of the judge's duties and is or is likely to become permanent, ~~and~~. The board is authorized to censure, warn, or remove a judge for an action or inaction that may constitute persistent failure to perform the judge's duties, violations of the Minnesota or federal constitutions, violations of Minnesota Statutes, incompetence in performing the judge's duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Subd. 4. **Authority to reopen matters.** The board is specifically empowered to reopen any matter wherein any information or evidence was previously precluded by a statute of limitations or by a previously existing provision of time limitation.

The board shall review all petitions made by citizens concerning judicial misconduct. The petitions made by the citizens must state in clear and concise language the facts and events that support the petition.

The board may require the petitioner to provide certified court records and transcripts. If the board finds the petition is sufficient to remove the judge, the judge shall reimburse the citizen the costs of the certified court records and transcripts.

If it is proven by the evidence in the petition and the determination of the board that the citizen or attorney for the citizen made a public record in the court notifying the judge that the judge was violating the constitutions or the statutes, and the board finds that the judge committed the violation, the board shall permanently remove the judge from office.

If the citizen or attorney for the citizen failed to make a public record in the court notifying the judge that the judge was violating the constitutions or the statutes, the board is authorized only to issue a warning to the judge. After three warnings from the board to a single judge, the judge is automatically removed from office.

The state government, political subdivisions, and corporations do not have the same rights as citizens. The remedies available for these entities are in the appellate courts.

The board shall respond to all petitions made by citizens. Upon making a petition to the board, the time limits for making an appeal in the courts is suspended until the board makes a decision on the petition.

Upon receipt of a petition, the board shall, within three working days, notify the judge of the petition and include a complete copy of the petition. The judge may respond

4.1 to the petition and submit any evidence and argument, within 20 days of receiving notice
4.2 of the petition.

4.3 The board shall make an initial response to the petitioner within two weeks of the
4.4 board receiving the petition, and at that time shall inform the petitioner what, if any,
4.5 evidence is necessary for the board to review the petition. If further evidence is necessary,
4.6 such as certified court records and transcripts, the petitioner has 30 days from the response
4.7 of the board to produce the necessary evidence.

4.8 The board, upon receiving the additional evidence required of the petitioner, shall
4.9 respond to the petition within 45 days.

4.10 The petitioner, if needing transcripts, shall bring the response letter from the
4.11 board to the court reporter for the judge. The court reporter shall produce the necessary
4.12 transcripts within ten days, at a cost to the petitioner. If the court reporter fails to produce
4.13 the transcript or transcripts within ten days, the court reporter shall be suspended from
4.14 employment, without pay until the time that the requested transcript or transcripts are
4.15 given to the petitioner. In this event, the board shall grant an extension of time for the
4.16 petitioner, until the transcript or transcripts are produced by the court reporter.

4.17 If the original petition is sufficient when submitted to the board, within two weeks of
4.18 receipt of the petition, the board shall send a response letter to the petitioner stating that
4.19 the petition is sufficient. The board shall then make a final determination of the petition
4.20 within 45 days of sending the response letter to the petitioner.

4.21 The Office of the Attorney General shall respond to any questions by the board
4.22 within ten days of receiving the questions.

4.23 The board has the authority to immediately remove a judge if it determines the judge
4.24 violated constitutional or statutory law, and if the citizen or counsel for the citizen made a
4.25 record in the court of the violation or violations. In this event, the decision of the board
4.26 shall be binding and the ruling or rulings made by the judge shall have no effect of law.

4.27 In the event the citizen or counsel for the citizen failed to make a record in the
4.28 court of constitutional or statutory violations, and in all other petitions that refer to
4.29 misconduct that did not violate constitutional or statutory law, the board is authorized only
4.30 to issue a warning to the judge. In all cases whereby the board has issued a warning
4.31 to a judge, the citizen reserves the right to appeal the decision of the judge. In these
4.32 cases, the warning issued by the board stands as notice to the appellate courts that the
4.33 citizens have determined a constitutional or statutory violation occurred in the lower court.
4.34 When the board has made such determination, the board's decision may be included in
4.35 the citizen's appeal and the appellate court must provide a remedy for the citizen with
4.36 reversal, instructions, and remand, when the board's determination has been violations of

the constitutional or statutory law. If the citizen demands that the case be remanded to a different judge, the clerk of courts shall assign another judge.

A judge removed by the board has the right to appeal the decision of the board to the legislature. The house of representatives shall hear the initial appeal. If the house of representatives determines the removal of the judge was unwarranted, then the senate shall also hear the appeal. Both houses must agree that the judge's removal was unwarranted in order to reverse the decision of the board. During the appeal, the judge shall be suspended with pay.

All records concerning the board are public record. Once a year, the board shall give all records to the legislative branch. The legislative branch shall then publish the petitions, response of the judges, and decisions of the board, including posting the information on the legislative Web site.

Subd. 5. **Retirement status.** (a) A judge who is retired by the ~~Supreme Court~~ legislature for disability must be considered to have retired voluntarily.

(b) This section and section 490A.01 must not affect the right of a judge who is suspended, retired, or removed hereunder from qualifying for any private pension or other private retirement benefits to which the judge would otherwise be entitled by law to receive. Judges removed by the Board on Judicial Standards are not eligible for state funded pension or retirement benefits.

Subd. 6. **Eligibility for judicial office; practice law.** A judge removed by the ~~Supreme Court~~ board is ineligible for any future service in a judicial office. ~~The question of the right of a removed judge to practice law in this state must be referred to the proper authority for review.~~

Subd. 7. **~~Supreme Court~~ Rules.** The ~~Supreme Court~~ legislature shall make rules to implement this section.

Sec. 3. Minnesota Statutes 2008, section 645.17, is amended to read:

645.17 PRESUMPTIONS IN ASCERTAINING LEGISLATIVE INTENT.

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

(1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;

(2) the legislature intends the entire statute to be effective and certain;

(3) the legislature does not intend to violate the Constitution of the United States or of this state; and

H.F. No. 1632, as introduced - 86th Legislative Session (2009-2010) [09-2304]

6.1 ~~(4) when a court of last resort has construed the language of a law, the legislature in~~
6.2 ~~subsequent laws on the same subject matter intends the same construction to be placed~~
6.3 ~~upon such language; and~~
6.4 ~~(5)~~ (4) the legislature intends to favor the public interest as against any private
6.5 interest.