

of which he may be a member or may serve because of his position as mayor of the city of Minneapolis.

Sec. 3. Effective date. This act shall become effective only after its approval by a majority of the governing body of the city of Minneapolis and upon compliance with the provisions of Minnesota Statutes, Section 645.021.

Approved May 22, 1963.

CHAPTER 806—H. F. No. 163

[Coded in Part]

An act relating to a civil appeal code; amending Minnesota Statutes 1961, Sections 605.01, 605.02, 605.03, 605.05, 605.08, 605.09, 605.10, 605.14, 605.16, 605.17, 605.18, 605.20, and Chapter 605 by adding new sections; and repealing Minnesota Statutes 1961, Sections 605.04, 605.06, 605.11, 605.12, 605.13, 605.15, 605.22, and 605.23.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1961, Section 605.01, is amended to read:

605.01 Civil appeal code; review by appeal. A judgment or order ~~in a civil action in a~~ *of the district court in a civil action* may be ~~removed to reviewed~~ *reviewed* by the supreme court by appeal; ~~of a party as provided in this chapter; and not otherwise.~~

Sec. 2. Minnesota Statutes 1961, Section 605.02, is amended to read:

605.02 Designation of parties; title. The party appealing shall be known as the appellant; and the adverse party as the respondent; ~~but~~ The title of the action shall not be changed in consequence of the appeal.

Sec. 3. Minnesota Statutes 1961, Section 605.03, is amended to read:

605.03 Manner of making appeal. *Subdivision 1.* An appeal shall be made by the service of a ~~written notice; in writing;~~ *written notice* on the adverse party; ~~and on the clerk with whom the judgment or order appealed from is entered; stating the appeal from the same; or some specific part thereof. To render the appeal effective for any purpose the party appealing shall; within the time~~

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provided by law for taking such appeal; file the notice together with the bond on appeal with the clerk of the lower court; and at the time of filing the notice and bond the appellant shall deposit with the clerk the sum of \$15, of which \$10 shall be transmitted to the clerk of the supreme court, as provided in section 605.04; as and for the filing fee required in the supreme court by section 357.08; and the remainder retained by the clerk of the court below as and for the fee provided in section 357.021. *The notice shall specify the judgment or order from which the appeal is taken. Not more than five days after expiration of the time to appeal, the appellant shall file the notice of appeal and the cost bond required by this chapter with the clerk of the court in which the judgment or order was entered, together with a deposit of \$15. The bond may be waived by stipulation of the parties.*

Subd. 2. When a party, in good faith, gives serves notice of appeal from a judgment or an order, and omits, through *inadvertence* or mistake, to do any other act necessary to perfect proceed further with the appeal, or to stay proceedings, the supreme court may permit an amendment grant relief on such terms as may be just.

Sec. 4. Minnesota Statutes 1961, Chapter 605, is amended by adding a section to read:

[605.045] Transmittal of fee. *Upon compliance with section 605.03, subdivision 1, the clerk of the court from which the appeal is taken shall immediately transmit to the clerk of the supreme court \$10 out of the fee prescribed by section 605.03, subdivision 1, together with a certified copy of the notice of appeal, bond or stipulation waiving such bond.*

Sec. 5. Minnesota Statutes 1961, Section 605.05, is amended to read:

605.05 Powers of appellate court. *Subdivision 1. The supreme court upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from in the respect mentioned in the notice of appeal and as to any or all of the parties; and, if necessary or proper, may order a new trial; or take any other action as the interests of justice may require. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.*

Subd. 2. On appeal from an order the supreme court may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the

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merits or affecting the judgment. It may review any other matter as the interests of justice may require.

Sec. 6. Minnesota Statutes 1961, Chapter 605, is amended by adding a section to read:

[605.065] Respondents right to obtain review. *A respondent may obtain review of a judgment or order entered in the same action which may adversely affect him by serving a notice of review on all parties to the action who may be affected by the judgment or order. The notice of review shall specify the judgment or order to be reviewed and shall be served upon the other parties within 15 days after service of the notice of appeal on that respondent and thereafter shall be filed with the clerk of the supreme court.*

Sec. 7. Minnesota Statutes 1961, Section 605.08, is amended to read:

605.08 Time. *Subdivision 1.* An appeal from a judgment may be taken within ~~six months~~ *90 days* after the entry thereof, and from an order within 30 days after *service of* written notice of the same ~~filing thereof from~~ *by* the adverse party.

Subd. 2. *No order made prior to the entry of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment under this section shall not be extended by the subsequent insertion therein of the costs and disbursements of the prevailing party.*

Sec. 8. Minnesota Statutes 1961, Section 605.09, is amended to read:

605.09 Appealable judgments and orders. An appeal may be taken to the supreme court ~~by the aggrieved party in the following cases:~~

(1) *(a)* From a judgment in an action commenced ~~entered~~ in the district court; ~~or brought there from another court from any judgment rendered in such court;~~ and upon such appeal the court may review any intermediate order involving the merits or necessarily affecting the judgment appealed from;

(2) *(b)* From an order ~~granting or refusing a provisional remedy; or which grants, refuses, dissolves, or refuses to dissolve, an injunction; or;~~

(c) *From* an order vacating or sustaining an attachment;

(3) ~~From an order involving the merits of the action or some part thereof;~~

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(4) From an order sustaining a demurrer, or from an order overruling a demurrer if the court certifies that the question presented by the demurrer which it overrules by such order is important and doubtful and makes such certification a part of the order; or

(d) From an order refusing a new trial, or from an order granting a new trial if the court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;

(5) (e) From an order which, in effect, determines the action, and prevents a judgment from which an appeal might be taken;

(6) (f) From an *a final* order or judgment made or rendered in proceedings supplementary to execution;

(7) (g) *Except as otherwise provided by statute, from a the final order; or judgment affecting a substantial right; made in a special proceeding, provided that the appeal must be taken within the time limited for appeal from an order; or upon a summary application in an action after judgment.*

(h) *If the district court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment.*

When an appeal is perfected under clause (2) or (7) of this section, and notice and bond on appeal are filed with the clerk of the supreme court, the party appealing, or the respondent, may apply to the supreme court, upon ten days' notice, for an order fixing the time and manner of the hearing of the appeal; and the court may, in its discretion, if it be of opinion that the substantial interests of the parties involved, or of the public, require a speedy hearing, summarily fix the time of hearing, whether the court be then in session or in vacation, and may summarily determine the time for filing paper books and briefs, and the method of submission.

Sec. 9. Minnesota Statutes 1961, Section 605.10, is amended to read:

605.10 **Bond or deposit for costs.** To render an appeal

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effectual for any purpose; A bond shall be executed by the appellant, conditioned that the appellant shall pay all costs and charges which may be awarded against him on the appeal, not exceeding the penalty of the bond, which shall be at least \$250; or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the judgment of the *appellate supreme court*; ~~but~~. Such bond or deposit may be waived by the written consent of the respondent.

Sec. 10. Minnesota Statutes 1961, Chapter 605, is amended by adding a section to read:

[605.115] Supersedeas bond. *Subdivision 1. An appeal from an order or judgment shall stay proceedings in the court below and save all rights affected thereby, if the appellant executes a supersedeas bond in the amount and form which the court below shall order and approve, in the cases provided in this section.*

Subd. 2. If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience and satisfaction of the order or judgment which the supreme court may give, if the order or any part thereof is affirmed or if the appeal is dismissed.

Subd. 3. If the appeal is from a judgment directing the payment of money, the condition of the bond shall be the payment of the judgment or that part of the judgment which is affirmed and all damages awarded against appellant upon the appeal, if the judgment or any part thereof is affirmed or if the appeal is dismissed.

Subd. 4. If the appeal is from a judgment directing the assignment or delivery of documents or personal property, the condition of the bond shall be the obedience of the order or judgment of the supreme court. The bond provided by this subdivision need not be given if the appellant places the document or personal property in the custody of the officer or receiver whom the court below may appoint.

Subd. 5. If the appeal is from a judgment directing the sale or delivery of possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of the possession of the property if the judgment is affirmed, and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in his possession during the pendency of the appeal.

Subd. 6. In cases not specified in subdivisions 2 to 5, the

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giving of the bond specified in section 605.10 shall stay proceedings in the court below.

Sec. 11. Minnesota Statutes 1961, Section 605.14, is amended to read:

605.14 Judgments directing conveyances; stay. *If the appeal is from a the judgment appealed from directs directing the execution of a conveyance or other instrument, its execution shall not be stayed by the an appeal until the instrument shall be executed and deposited with the clerk of the court below with whom the judgment is entered; to abide the judgment of the appellate supreme court.*

Sec. 12. Minnesota Statutes 1961, Section 605.16, is amended to read:

605.16 Extent of stay. *When an appeal is perfected, a bond is given as provided by sections 605.12, 605.13, and 605.15, section 605.115, it shall stay all further proceedings in the court below upon the judgment or order appealed from or the matter embraced therein; but such the lower court may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from; and the court below may dispense with or limit the security required when the appellant is an executor, administrator, trustee, or other person acting in another's right.*

Sec. 13. Minnesota Statutes 1961, Section 605.17, is amended to read:

605.17 Respondents bond to enforce judgment. *Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the court below, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his giving bond to the appellant as herein provided, if it be made to appear to the satisfaction of the court that the appeal was taken for the purpose of delay. Such bond shall be executed by the respondent, or some one in his behalf, and shall be conditioned that if the judgment be reversed or modified the respondent will make such restitution as the appellate supreme court shall direct.*

Sec. 14. Minnesota Statutes 1961, Section 605.18, is amended to read:

605.18 Joinder of bond provisions; service on adverse party. *The bonds in the several cases of appeals provided for in sections 605.10 to 605.13, and 605.15, and 605.115 or such of them as may be required in any case, may be in one instrument or several, at the*

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option of the appellant; and a copy, including the name and residence of each surety; and shall be served on the adverse party with the notice of appeal; unless a deposit be made as provided in section 605.10 and notice thereof given.

Sec. 15. Minnesota Statutes 1961, Section 605.20, is amended to read:

605.20 Perishable property. In cases not specified in sections 605.12 to 605.15; the perfecting of an appeal by giving the bond mentioned in section 605.10 shall stay proceedings in the court below upon the judgment appealed from, except that when it directs *If the appeal is from a judgment directing the sale of perishable property, the court may order the property to be sold; and the proceeds thereof deposited or invested to abide the judgment of the appellate supreme court.*

Sec. 16. Minnesota Statutes 1961, Chapter 605, is amended by adding a section to read:

[605.225] Death of a party. *If any party to the appeal shall die while an appeal is pending in the supreme court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the supreme court an affidavit showing such death and the name and address of the legal representative or successor in interest. The clerk, after giving notice to the representative or successor in interest, shall substitute the name of such legal representative or successor in interest by or against whom the appeal shall thereafter proceed.*

Sec. 17. **[605.001] Citation.** *Minnesota Statutes, Chapter 605 may be cited as the Civil Appeal Code.*

Sec. 18. *Minnesota Statutes 1961, Sections 605.04, 605.06, 605.11, 605.12, 605.13, 605.15, 605.22, and 605.23 are repealed.*

Approved May 22, 1963.

CHAPTER 807—H. F. No. 315

An act relating to the annexation of certain lands to new municipalities; amending Minnesota Statutes 1961, Sections 414.01, Subdivisions 2, 6, 7, 8, and 11; 414.02, Subdivisions 2 and 3; 414.03, Subdivisions 2 and 4; 414.04, Subdivision 2; and 414.06, Subdivision 3.

Be it enacted by the Legislature of the State of Minnesota:

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