

(d) Cigarettes, cigars, tobacco and tobacco products with a retail price of \$1 or less;

(e) Items actually sold through vending machines; and

(f) Any type of grocery product sold by a store primarily engaged in the sale of grocery products which is not marked in accordance with the uniform products code or any similar marking system designed to be scanned by electronic or magnetic checkout equipment.

Subd. 3. In addition to the exemptions allowed in subdivision 2, a retailer may choose to not individually price mark not more than 25 classes of items or individual items which classes or items shall be set forth on a list posted in a conspicuous place in the retail store, and may choose to not individually price mark not more than 25 additional classes of items or individual items which are advertised or featured at a reduced price.

Sec. 2. ~~[325.836]~~ **PENALTIES.** (a) Knowingly and willfully failing to have a clearly readable price indicated on more than six individual items of the same commodity shall constitute a petty misdemeanor and each commodity not priced in compliance with this act shall constitute a separate violation. Each day that a violation continues shall also constitute a separate violation;

(b) Notwithstanding any other provision of law, any person may bring an action to enjoin a violation of this act.

Sec. 3. ~~[325.837]~~ **LOCAL ORDINANCE PRE-EMPTED.** No subordinate unit of government may adopt or enforce any rule or ordinance requiring individually marked prices on retail merchandise other than that contained in this act.

Approved April 5, 1978.

CHAPTER 738-H.F.No.338

[Coded in Part]

An act relating to civil actions; limiting ad damnum clauses; establishing rules for punitive damages; authorizing costs and attorney fees to be awarded when one party acts in bad faith; modifying rules of comparative fault, contribution, and joint liability; codifying a useful life defense; requiring notice of possible claims; establishing a statute of limitations for certain strict liability actions and for actions based on the application of pesticides; amending Minnesota Statutes 1976, Sections 541.05; 541.07; 604.01, Subdivision 1, and by adding a subdivision; and Chapters 544, by adding a section; 549, by adding sections; and 604, by adding sections.

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

Section 1. Minnesota Statutes 1976, Section 541.05, is amended to read:

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541.05 VARIOUS CASES, SIX YEARS. Subdivision 1. Except where the uniform commercial code otherwise prescribes, the following actions shall be commenced within six years:

(1) Upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed;

(2) Upon a liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided by section 541.07;

(3) For a trespass upon real estate;

(4) For taking, detaining, or injuring personal property, including actions for the specific recovery thereof;

(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated;

(6) For relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(7) To enforce a trust or compel a trustee to account, where he has neglected to discharge the trust, or claims to have fully performed it, or has repudiated the trust relation;

(8) Against sureties upon the official bond of any public officer, whether of the state or of any county, town, school district, or a municipality therein; in which case the limitation shall not begin to run until the term of such officer for which the bond was given shall have expired;

(9) For damages caused by a dam, used for commercial purposes.

Subd. 2. Unless otherwise provided by law, any action based on the strict liability of the defendant and arising from the manufacture, sale, use or consumption of a product shall be commenced within four years.

Sec. 2. Minnesota Statutes 1976, Section 541.07, is amended to read:

541.07 TWO YEAR LIMITATIONS. Except where the uniform commercial code otherwise prescribes, the following actions shall be commenced within two years:

(1) For libel, slander, assault, battery, false imprisonment, or other tort, resulting in personal injury, and all actions against physicians, surgeons, dentists, hospitals, sanatoriums, for malpractice, error, mistake or failure to cure, whether based on contract or tort; provided a counter-claim may be pleaded as a defense to any action for services brought by a physician, surgeon, dentist, hospital or sanatorium, after the limitations herein described notwithstanding it is barred by the provisions of this chapter, if it was

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the property of the party pleading it at the time it became barred and was not barred at the time the claim sued on originated, but no judgment thereof except for costs can be rendered in favor of the party so pleading it;

(2) Upon a statute for a penalty or forfeiture;

(3) For damages caused by a dam, other than a dam used for commercial purposes; but as against one holding under the pre-emption or homestead laws, such limitations shall not begin to run until a patent has been issued for the land so damaged;

(4) Against a master for breach of an indenture of apprenticeship; the limitation, in such case, to run from the expiration of the term of service;

(5) For the recovery of wages or overtime or damages, fees or penalties accruing under any federal or state law respecting the payment of wages or overtime or damages, fees or penalties. (The term "wages" as used herein shall mean all remuneration for services or employment, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, where the relationship of master and servant exists and the term "damages," as used herein, shall mean single, double, or treble damages, accorded by any statutory cause of action whatsoever and whether or not the relationship of master and servant exists);

(6) For damages caused by the establishment of a street or highway grade or a change in the originally established grade;

(7) For sales or use taxes imposed by the laws of any other state;

(8) Against the person who applies the pesticide for injury or damage to property resulting from the application, but not the manufacture or sale, of a pesticide.

Sec. 3. Minnesota Statutes 1976, Chapter 544, is amended by adding a section to read:

[544.36] AD DAMNUM: LIMITATION. In a pleading in a civil action which sets forth an unliquidated claim for relief, whether an original claim, cross-claim, or third-party claim, if a recovery of money is demanded in an amount less than \$50,000, the amount shall be stated. If a recovery of money in an amount greater than \$50,000 is demanded, the pleading shall state merely that recovery of reasonable damages in an amount greater than \$50,000 is sought.

This section may be superseded by an amendment to the rules of civil procedure adopted after July 31, 1978.

Sec. 4. Minnesota Statutes 1976, Chapter 549, is amended by adding a section to read:

[549.20] PUNITIVE DAMAGES. Subdivision 1. Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant

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show a willful indifference to the rights or safety of others.

Subd. 2. Punitive damages can properly be awarded against a master or principal because of an act done by an agent only if:

(a) the principal authorized the doing and the manner of the act, or

(b) the agent was unfit and the principal was reckless in employing him, or

(c) the agent was employed in a managerial capacity and was acting in the scope of employment, or

(d) the principal or a managerial agent of the principal ratified or approved the act.

Subd. 3. Any award of punitive damages shall be measured by those factors which justly bear upon the purpose of punitive damages, including the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, the financial condition of the defendant, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject.

Sec. 5. Minnesota Statutes 1976, Chapter 549, is amended by adding a section to read:

[549.21] REIMBURSEMENT FOR CERTAIN COSTS IN CIVIL ACTIONS.

Upon motion of a party prevailing as to an issue, the court in its discretion may award to that party costs, disbursements, reasonable attorney fees and witness fees relating to the issue if the party or attorney against whom costs, disbursements, reasonable attorney and witness fees are charged acted in bad faith as to that issue. To qualify for an award under this section, a party shall give timely notice of intent to claim an award, which notice shall in any event be given prior to the resolution of the issue. An award under this section shall be without prejudice and as an alternative to any claim for sanctions that may be asserted under the rules of civil procedure.

Sec. 6. Minnesota Statutes 1976, Section 604.01, Subdivision 1, is amended to read:

604.01 COMPARATIVE FAULT; EFFECT. Subdivision 1. **SCOPE OF APPLICATION.** Contributory ~~negligence~~ fault shall not bar recovery in an action by any person or his legal representative to recover damages for ~~negligence~~ fault resulting in death or in injury to person or property, if ~~such negligence~~ the contributory fault was not as great as greater than the ~~negligence of the person~~ fault of the person against whom recovery is sought, but any damages allowed shall be diminished in ~~the~~ proportion to the

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amount of ~~negligence fault~~ attributable to the person recovering. The court may, and when requested by ~~either any~~ party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of ~~negligence fault~~ attributable to each party; and the court shall then reduce the amount of ~~such~~ damages in proportion to the amount of ~~negligence fault~~ attributable to the person recovering. ~~When there are two or more persons who are jointly liable, contributions to awards shall be in proportion to the percentage of negligence attributable to each; provided, however, that each shall remain jointly and severally liable for the whole award.~~

Sec. 7. Minnesota Statutes 1976, Section 604.01, is amended by adding a subdivision to read:

Subd. 1a. FAULT. "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an express consent, misuse of a product and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

Sec. 8. Minnesota Statutes 1976, Chapter 604, is amended by adding a section to read:

[604.02] APPORTIONMENT OF DAMAGES. Subdivision 1. When two or more persons are jointly liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that each is jointly and severally liable for the whole award.

Subd. 2. Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Subd. 3. In the case of a claim arising from the manufacture, sale, use or consumption of a product, an amount uncollectible from any person in the chain of manufacture and distribution shall be reallocated among all other persons in the chain of manufacture and distribution but not among the claimant or others at fault who are not in the chain of manufacture or distribution of the product. Provided, however, that a person whose fault is less than that of a claimant is liable to the claimant only for that portion of the judgment which represents the percentage of fault attributable to him.

Sec. 9. Minnesota Statutes 1976, Chapter 604, is amended by adding a section to read:

[604.03] USEFUL LIFE OF PRODUCT. Subdivision 1. In any action for the recovery of damages for personal injury, death or property damage arising out of the manufacture, sale, use or consumption of a product, it is a defense to a claim against a

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designer, manufacturer, distributor or seller of the product or a part thereof, that the injury was sustained following the expiration of the ordinary useful life of the product.

Subd. 2. The useful life of a product is not necessarily the life inherent in the product, but is the period during which with reasonable safety the product should be useful to the user. This period shall be determined by reference to the experience of users of similar products, taking into account present conditions and past developments, including but not limited to (1) wear and tear or deterioration from natural causes, (2) the progress of the art, economic changes, inventions and developments within the industry, (3) the climatic and other local conditions peculiar to the user, (4) the policy of the user and similar users as to repairs, renewals and replacements, (5) the useful life as stated by the designer, manufacturer, distributor, or seller of the product in brochures or pamphlets furnished with the product or in a notice attached to the product, and (6) any modification of the product by the user.

Sec. 10. Minnesota Statutes 1976, Chapter 604, is amended by adding a section to read:

[604.04] NOTICE OF POSSIBLE CLAIM REQUIRED. Subdivision 1. The attorney for a person who intends to claim damage for or on account of personal injury, death or property damage arising out of the manufacture, sale, use or consumption of a product shall cause to be presented a notice of possible claim stating the time, place and circumstances of events giving rise to the claim and an estimate of compensation or other relief to be sought. This notice shall be given within six months of the date of entering into an attorney-client relation with the claimant in regard to the claim. Notice shall be given to all persons against whom the claim is likely to be made. Any person in the chain of manufacture and distribution shall promptly furnish to the claimant's attorney the names and addresses of all persons he knows to be in the chain of manufacture and distribution if requested to do so by the attorney at the time the notice is given. Failure to furnish this information shall subject the person to the liability provided for in subdivision 3.

Actual notice of sufficient facts to reasonably put a person against whom the claim is to be made or his insurer on notice of a possible claim satisfies the notice requirements of this section. Failure to state an estimate of the amount of compensation or other relief demanded does not invalidate the notice, but the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 15 days after demand by a person to whom the notice was given or by his insurer.

Subd. 2. A claimant who delays entering into an attorney-client relation with the purpose of delaying unreasonably the notice required by subdivision 1 is subject to liability as provided in subdivision 3.

Subd. 3. Any person injured by the failure of a claimant or his attorney or of a person in the chain of manufacture and distribution to comply with the requirements of this section may recover damages, costs and reasonable attorney fees from a person who violated this section, but failure to give notice does not affect the validity of a claim against a party who did not receive notice.

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Sec. 11. **EFFECTIVE DATE.** Sections 1, 2, 4, 5, 6, 7, 8, 9 and 10 are effective April 15, 1978, and apply to all causes of action arising on or after that date.

Section 3 is effective August 1, 1978.

Approved April 5, 1978.

CHAPTER 739-H.F.No.474

[Coded in Part]

An act relating to highway traffic regulations; defining terms; driving rules; pedestrian rules; regulating the operation of motor vehicles, bicycles and other human powered vehicles; amending Minnesota Statutes 1976, Sections 169.01, Subdivisions 2, 3, 31, 51, and by adding a subdivision; 169.03, Subdivision 8; 169.18, Subdivision 7; 169.19, Subdivisions 1 and 8; 169.20, Subdivision 4; 169.21, Subdivision 3; 169.31; and Chapter 169, by adding a section; repealing Minnesota Statutes 1976, Section 169.221.

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

Section 1. Minnesota Statutes 1976, Section 169.01, Subdivision 2, is amended to read:

Subd. 2. **VEHICLE.** "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, ~~except~~ excepting devices ~~moved by human power~~ or used exclusively upon stationary rails or tracks.

Sec. 2. Minnesota Statutes 1976, Section 169.01, Subdivision 3, is amended to read:

Subd. 3. **MOTOR VEHICLE.** "Motor vehicle" means every vehicle which is self-propelled ~~and not deriving its power from overhead wires~~ and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include a vehicle moved solely by human power.

Sec. 3. Minnesota Statutes 1976, Section 169.01, Subdivision 31, is amended to read:

Subd. 31. **ROADWAY.** "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder even though such sidewalk or shoulder is used by persons riding bicycles or other human powered vehicles. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

Sec. 4. Minnesota Statutes 1976, Section 169.01, Subdivision 51, is amended to read:

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