

CHAPTER 211—S.F.No. 877

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CHAPTER 212—S.F.No. 627

An act relating to public administration; requiring certification of expert review in civil actions against certain professionals; setting duties of the office of technology; amending Minnesota Statutes 1996, section 136F.59, by adding a subdivision; 1997 S. F. No. 1905, article 3, section 9, subdivisions 1 and 3; proposing coding for new law in Minnesota Statutes, chapter 544; repealing 1997 S. F. No. 1888, article 3, section 35.

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

Section 1. Minnesota Statutes 1996, section 136F.59, is amended by adding a subdivision to read:

Subd. 3. OFFICE OF TECHNOLOGY. The system office and the campuses shall cooperate with the office of technology in its responsibility to coordinate information and communications technology development throughout the state. The system and campuses shall consult with the office of technology throughout any efforts to plan or implement information and communication systems to ensure that the systems are effective, efficient, and, where appropriate, compatible with other state systems.

Sec. 2. [544.42] ACTIONS AGAINST PROFESSIONALS; CERTIFICATION OF EXPERT REVIEW.

Subdivision 1. DEFINITIONS. For purposes of this section:

(1) "professional" means a licensed attorney or an architect, certified public accountant, engineer, land surveyor, or landscape architect licensed or certified under sections 326.02 to 326.229; and

(2) "action" includes an original claim, cross-claim, counterclaim, or third-party claim. An action does not include a claim for damages requiring notice pursuant to section 604.04.

Subd. 2. REQUIREMENT. In an action against a professional alleging negligence or malpractice in rendering a professional service where expert testimony is to be used by a party to establish a prima facie case, the party must:

(1) unless otherwise provided in subdivision 3, paragraph (a), clause (2) or (3), serve upon the opponent with the pleadings an affidavit as provided in subdivision 3; and

(2) serve upon the opponent within 180 days an affidavit as provided in subdivision 4.

Subd. 3. AFFIDAVIT OF EXPERT REVIEW. (a) The affidavit required by subdivision 2, clause (1), must be drafted by the party's attorney and state that:

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(1) the facts of the case have been reviewed by the party's attorney with an expert whose qualifications provide a reasonable expectation that the expert's opinions could be admissible at trial and that, in the opinion of this expert, the defendant deviated from the applicable standard of care and by that action caused injury to the plaintiff;

(2) the expert review required by clause (1) could not reasonably be obtained before the action was commenced because of the applicable statute of limitations; or

(3) the parties have agreed to a waiver of the expert review required by clause (1) or the party has applied for a waiver or modification by the court under paragraph (c).

(b) If an affidavit is executed under paragraph (a), clause (2), the affidavit in paragraph (a), clause (1), must be served on the defendant or the defendant's counsel within 90 days after service of the summons and complaint.

(c) The certification of expert review required under this section may be waived or modified if the court where the matter will be venued determines, upon an application served with commencement of the action, that good cause exists for not requiring the certification. Good cause includes, but is not limited to, a showing that the action requires discovery to provide a reasonable basis for the expert's opinion or the unavailability, after a good faith effort, of a qualified expert at reasonable cost. If the court waives or modifies the expert review requirements, the court shall establish a scheduling order for compliance or discovery. If the court denies a request for a waiver under this subdivision, the plaintiff must serve on the defendant the affidavit required under subdivision 2, clause (1), within 60 days, and the affidavit required under subdivision 2, clause (2), within 180 days.

Subd. 4. IDENTIFICATION OF EXPERTS TO BE CALLED. (a) The affidavit required by subdivision 2, clause (2), must be signed by the party's attorney and state the identity of each person whom the attorney expects to call as an expert witness at trial to testify with respect to the issues of negligence, malpractice, or causation, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. Answers to interrogatories that state the information required by this subdivision satisfy the requirements of this subdivision if they are signed by the party's attorney and served upon the opponent within 180 days after commencement of the action against the defendant or within 180 days after service of the affidavit required by subdivision 3, paragraph (a), clause (2) or (3).

(b) The parties by agreement, or the court for good cause shown, may provide for extensions of the time limits specified in subdivision 2, 3, or this subdivision. Nothing in this subdivision prevents any party from calling additional expert witnesses or substituting other expert witnesses.

Subd. 5. RESPONSIBILITIES OF PARTY AS ATTORNEY. If a party is acting pro se, the party shall sign the affidavit or answers to interrogatories referred to in this section and is bound by those provisions as if represented by an attorney.

Subd. 6. PENALTY FOR NONCOMPLIANCE. (a) Failure to comply with subdivision 2, clause (1), within 60 days after demand for the affidavit results, upon motion, in mandatory dismissal of each cause of action with prejudice as to which expert testimony is necessary to establish a prima facie case.

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(b) Failure to comply with subdivision 3, paragraph (b) or (c), results, upon motion, in mandatory dismissal of each cause of action with prejudice as to which expert testimony is necessary to establish a prima facie case.

(c) Failure to comply with subdivision 4 results, upon motion, in mandatory dismissal of each action with prejudice as to which expert testimony is necessary to establish a prima facie case, provided that an initial motion to dismiss an action under this paragraph based upon claimed deficiencies of the affidavit or answers to interrogatories shall not be granted unless, after notice by the court, the nonmoving party is given 60 days to satisfy the disclosure requirements in subdivision 4. In providing its notice, the court shall issue specific findings as to the deficiencies of the affidavit or answers to interrogatories.

Subd. 7. CONSEQUENCES OF SIGNING AFFIDAVIT. The signature of the party or the party's attorney constitutes a certification that the person has read the affidavit or answers to interrogatories, and that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, it is true, accurate, and made in good faith. A certification made in violation of this subdivision subjects the attorney or party responsible for that conduct to reasonable attorney's fees, costs, disbursements, and other damages that may be determined by the court.

Sec. 3. 1997 S. F. No. 1905, article 3, section 9, subdivision 1, if enacted, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of sections 16E.03 to 16E.05, the following terms have the meanings given them.

(a) "Information and communications technology activity" means the development or acquisition of information and communications technology devices and systems, but does not include MNet or its contractors.

(b) "Data processing device or system" means equipment or computer programs, including computer hardware, firmware, software, and communication protocols, used in connection with the processing of information through electronic data processing means, and includes data communication devices used in connection with computer facilities for the transmission of data.

(c) "State agency" means an agency in the executive branch of state government and includes state colleges and universities and the Minnesota higher education services office notwithstanding any other law enacted at the 1997 legislative session.

Sec. 4. 1997 S. F. No. 1905, article 3, section 9, subdivision 3, if enacted, is amended to read:

Subd. 3. EVALUATION AND APPROVAL. A state agency may not undertake an information and communications technology activity until it has been evaluated according to the procedures developed under subdivision 4. The governor or governor's designee shall give written approval of the proposed activity. If the proposed activity is not approved, the commissioner of finance shall cancel the unencumbered balance of any appropriation allotted for the activity. This subdivision does not apply to acquisitions or development of information and communications systems that have anticipated total cost of less than \$100,000. The Minnesota state colleges and universities shall submit for approval any activity related to acquisitions or development of information and communications systems that has a total anticipated cost of more than \$250,000.

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Sec. 5. REPEALER.

1997 S. F. No. 1888, article 3, section 35, if enacted, is repealed.

Sec. 6. EFFECTIVE DATE; APPLICATION.

Section 2 is effective August 1, 1997, and applies to causes of action arising from incidents occurring on or after that date and to actions commenced on or after August 1, 1998.

Presented to the governor May 27, 1997

Signed by the governor May 30, 1997, 1:07 p.m.

CHAPTER 213—S.F.No. 1513

An act relating to civil actions; modifying and expanding provisions for sanctions in civil actions; fixing time limitations on civil actions against occupational therapists; amending Minnesota Statutes 1996, sections 336.2A-108; 541.07; 566.25; 570.041, subdivision 1; 571.932, subdivision 6; and 609.5314, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 549; repealing Minnesota Statutes 1996, section 549.21.

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

ARTICLE 1**SANCTIONS IN CIVIL ACTIONS****Section 1. [549.211] SANCTIONS IN CIVIL ACTIONS.**

Subdivision 1. ACKNOWLEDGMENT REQUIRED. The parties by their attorneys in a civil action shall attach to and make a part of the pleading, written motions, and papers served on the opposite party or parties a signed acknowledgment stating that the parties acknowledge that sanctions may be imposed under this section.

Subd. 2. EFFECT OF ACKNOWLEDGMENT. By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

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