

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1997 S. F. No. 1888, article 3, section 35, if enacted, is repealed.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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(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Subd. 3. SANCTIONS MAY BE IMPOSED. If, after notice and a reasonable opportunity to respond, the court determines that subdivision 2 has been violated, the court may, subject to the conditions in this section, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision 2 or are responsible for the violation.

Subd. 4. HOW INITIATED. (a) A motion for sanctions under this section must be made separately from other motions or requests and describe the specific conduct alleged to violate subdivision 2. It must be served as provided under the rules of civil procedure, but may not be filed with or presented to the court unless, within 21 days after service of the motion, or another period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm is jointly responsible for violations committed by its partners, associates, and employees.

(b) On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision 2 and directing an attorney, law firm, or party to show cause why it has not violated subdivision 2 with respect to that conduct.

Subd. 5. NATURE OF SANCTION; LIMITATIONS. (a) A sanction imposed for violation of this section must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraph (b), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(b) Monetary sanctions may not be awarded against a represented party for a violation of subdivision 2, clause (2). Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(c) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

Subd. 6. APPLICATION; EFFECT ON OTHER SANCTIONS. (a) This section does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to discovery provisions and remedies of the rules of civil procedure.

(b) An order or award of sanctions under this section is without prejudice and an alternative to sanctions that may be asserted under the rules of civil procedure.

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ARTICLE 2**CONFORMING AMENDMENTS**

Section 1. Minnesota Statutes 1996, section 336.2A-108, is amended to read:

336.2A-108 UNCONSCIONABILITY.

(1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2), the court may award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability, the court may make an award under section ~~549.21~~ 549.211 to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

Sec. 2. Minnesota Statutes 1996, section 566.25, is amended to read:

566.25 JUDGMENT.

Upon finding the complaint proved, the court may, in its discretion, do any or all of the following, either alone or in combination:

(a) Order the owner to remedy the violation or violations found by the court to exist if the court is satisfied that corrective action will be undertaken promptly; or

(b) Order the tenant to remedy the violation or violations found by the court to exist and deduct the cost from the rent subject to the terms as the court determines to be just; or

(c) Appoint an administrator with powers as set out in section 566.29, and

(1) direct that rents due:

(i) on and from the day of entry of judgment, in the case of petitioning tenants or neighborhood organizations, and

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(ii) on and from the day of service of the judgment on all other tenants and commercial tenants of the building, if any, shall be deposited with the administrator appointed by the court, and

(2) direct that the administrator use the rents collected for the purpose of remedying the violations found to exist by the court paying the debt service, taxes and insurance, and providing the services necessary to the ordinary operation and maintenance of the building which the owner is obligated to provide but fails or refuses to provide; or

(d) Find the extent to which any uncorrected violations impair the tenants' use and enjoyment of the premises contracted for and order the rent abated accordingly. Should the court choose to enter judgment under this paragraph the parties shall be informed and the court shall find the amount by which the rent shall be abated;

(e) After termination of administration, continue the jurisdiction of the court over the building for a period of one year and order the owner to maintain the building in compliance with all applicable state, county, and city health, safety, housing, building, fire prevention, and housing maintenance codes; and

(f) Grant any other relief the court deems just and proper, including a judgment against the owner for reasonable attorney fees, not to exceed \$500, in the case of a prevailing tenant or neighborhood organization. The \$500 limitation does not apply to awards made under section ~~549.21~~ 549.211 or other specific statutory authority.

Sec. 3. Minnesota Statutes 1996, section 570.041, subdivision 1, is amended to read:

Subdivision 1. **AMOUNT AND CONDITION.** Before issuing any order of attachment, the court shall require the claimant to post a bond in the penal sum of at least \$500, conditioned that if judgment be given for the respondent or if the order is vacated, the claimant will pay all costs that may be awarded against the claimant and all damages caused by the attachment. Damages may be awarded in a sum in excess of the bond only if, before issuance of the order establishing the amount of the bond, the respondent specifically notified the claimant and the court of the likelihood that the respondent would suffer the specific damages, or the court finds that the claimant acted in bad faith in bringing or pursuing the attachment proceeding. In establishing the amount of the bond, the court shall consider the value and nature of the property attached, the method of retention or storage of the property, the potential harm to the respondent or any party, and other factors that the court deems appropriate. Nothing in this section shall modify or restrict the application of section 549.20 or ~~549.21~~ 549.211.

Sec. 4. Minnesota Statutes 1996, section 571.932, subdivision 6, is amended to read:

Subd. 6. **BONDING REQUIREMENT.** (a) Before issuing an order of garnishment, the court shall require the creditor to post a bond in the penal sum of at least \$500, conditioned that if judgment be given for the debtor or if the order is vacated, the creditor will pay all costs that may be awarded against the creditor and all damages caused by the garnishment. Damages may be awarded in a sum in excess of the bond only if, before the issuance of the order establishing the amount of the bond, the debtor specifically notified the creditor and the court of the likelihood that the debtor would suffer the specific damages, or the court finds that the creditor acted in bad faith in bringing or pursuing the garnishment proceeding. In establishing the amount of the bond, the court shall consider the value and nature of the property garnished, the method of retention or storage of the prop-

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erty, the potential harm to the debtor or any party, and other factors that the court considers appropriate. Nothing in this section modifies or restricts the application of section 549.20 or ~~549.21~~ 549.211.

(b) The court may at any time modify the amount of the bond upon its own motion or upon the motion of a party based on the value of the property garnished, the nature of the property attached, the methods of retention or storage of the property, the potential harm to the debtor or a party, or other factor that the court considers appropriate.

(c) In lieu of filing a bond, either the creditor or the debtor may satisfy the bonding requirements by depositing cash, an irrevocable letter of credit, a cashier's check, or a certified check with the court.

Sec. 5. Minnesota Statutes 1996, section 609.5314, subdivision 3, is amended to read:

Subd. 3. **JUDICIAL DETERMINATION.** (a) Within 60 days following service of a notice of seizure and forfeiture under this section, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the county attorney for that county, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property is less than \$500, the claimant may file an action in conciliation court for recovery of the seized property without paying the conciliation court filing fee. No responsive pleading is required of the county attorney and no court fees may be charged for the county attorney's appearance in the matter. The proceedings are governed by the rules of civil procedure.

(b) The complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff's interest in the property seized. Notwithstanding any law to the contrary, an action for the return of property seized under this section may not be maintained by or on behalf of any person who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision.

(c) If the claimant makes a timely demand for judicial determination under this subdivision, the appropriate agency must conduct the forfeiture under section 609.531, subdivision 6a.

(d) If a demand for judicial determination of an administrative forfeiture is filed under this subdivision and the court orders the return of the seized property, the court shall order that filing fees be reimbursed to the person who filed the demand. In addition, the court may order the ~~payment of reasonable costs, expenses, and attorney fees sanctions~~ payment of reasonable costs, expenses, and attorney fees sanctions under section ~~549.21, subdivision 2~~ 549.211. If the court orders payment of these costs, they must be paid from forfeited money or proceeds from the sale of forfeited property from the appropriate law enforcement and prosecuting agencies in the same proportion as they would be distributed under section 609.5315, subdivision 5.

Sec. 6. **REPEALER.**

Minnesota Statutes 1996, section 549.21, is repealed.

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ARTICLE 3
LIMITATIONS PERIODS

Section 1. Minnesota Statutes 1996, section 541.07, is amended to read:

541.07 TWO- OR THREE-YEAR LIMITATIONS.

Except where the Uniform Commercial Code, this section, section 148A.06, or section 541.073 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, occupational therapists, other health care professionals as defined in section 145.61, and veterinarians as defined in chapter 156, hospitals, sanitariums, for malpractice, error, mistake or failure to cure, whether based on contract or tort; provided a counterclaim may be pleaded as a defense to any action for services brought by a physician, surgeon, dentist, occupational therapists, or other health care professional or veterinarian, hospital or sanitarium, after the limitations herein described notwithstanding it is barred by the provisions of this chapter, if it was 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, except as provided in sections 541.074 and 541.075;

(3) for damages caused by a dam, other than a dam used for commercial purposes; but as against one holding under the preemption or homestead laws, the 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 runs 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 except, that if the employer fails to submit payroll records by a specified date upon request of the department of labor and industry or if the nonpayment is willful and not the result of mistake or inadvertence, the limitation is three years. (The term "wages" means 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" means 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) 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.

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Sec. 2. EFFECTIVE DATE.

Section 1 is effective August 1, 1997, and applies to causes of action arising on or after that date.

Presented to the governor May 20, 1997

Signed by the governor May 22, 1997, 12:15 p.m.

CHAPTER 214—S.F.No. 294

An act relating to peace officers; requiring law enforcement agencies to do background investigations for applicants for employment as peace officers; requiring employers to disclose personnel records for law enforcement background investigations; providing immunity for employers who disclose information to law enforcement; requiring notice to the POST board when a background investigation is initiated; authorizing sharing of data on subjects of background investigations; amending Minnesota Statutes 1996, sections 13.41, subdivision 2a; 13.43, by adding a subdivision; 604A.31, subdivision 3; and 626.845, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 626.

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

Section 1. Minnesota Statutes 1996, section 13.41, subdivision 2a, is amended to read:

Subd. 2a. **BOARD OF PEACE OFFICER STANDARDS AND TRAINING.** The following government data of the board of peace officer standards and training are private data:

- (1) home addresses of licensees and applicants for licenses; and
- (2) data that identify the state agency, statewide system, or political subdivision that employs a licensed peace officer.

The board may disseminate private data on applicants and licensees as is necessary to administer law enforcement licensure or to provide data under section 626.845, subdivision 1, to law enforcement agencies who are conducting employment background investigations.

Sec. 2. Minnesota Statutes 1996, section 13.43, is amended by adding a subdivision to read:

Subd. 12. **SHARING OF LAW ENFORCEMENT PERSONNEL BACKGROUND INVESTIGATION DATA.** A law enforcement agency shall share data from a background investigation done under section 626.87 with the peace officer standards and training board or with a law enforcement agency doing an investigation of the subject of the data under section 626.87.

Sec. 3. Minnesota Statutes 1996, section 604A.31, subdivision 3, is amended to read:

Subd. 3. **BACKGROUND CHECKS.** (a) Certain persons who issue certificates in conjunction with gun permit background checks are immune from liability as provided in section 624.713, subdivision 1.

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