

## CHAPTER 604

## ACTIONS INVOLVING NEGLIGENCE

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**604.01 COMPARATIVE FAULT; EFFECT.**

Subdivision 1. **Scope of application.** Contributory fault shall not bar recovery in an action by any person or the person's legal representative to recover damages for fault resulting in death or in injury to person or property, if the contributory fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the person recovering. The court may, and when requested by any party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each party; and the court shall then reduce the amount of damages in proportion to the amount of fault attributable to the person recovering.

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.

Subd. 2. **Personal injury or death; settlement or payment.** Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf payment was made.

Subd. 3. **Property damage; settlement or payment.** Settlement with or any payment made to a person or on the person's behalf to others for damage to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made.

Subd. 4. **Settlement or payment; admissibility of evidence.** Except in an action in which settlement and release has been pleaded as a defense, any settlement or payment referred to in subdivisions 2 and 3 shall be inadmissible in evidence on the trial of any legal action.

Subd. 5. **Credit for settlements and payments; refund.** All settlements and payments made under subdivisions 2 and 3 shall be credited against any final settlement or judgment; provided however that in the event that judgment is entered against the person seeking recovery or if a verdict is rendered for an amount less than the total of any such advance payments in favor of the recipient thereof, such person shall not be required to refund any portion of such advance payments voluntarily made. Upon motion to the court in the absence of a jury and upon proper proof thereof, prior to entry of judgment on a verdict, the court shall first apply the provisions of subdivision 1 and then shall reduce the amount of the damages so determined by the amount of the payments previously made to or on behalf of the person entitled to such damages.

**History:** 1969 c 624 s 1; 1978 c 738 s 6,7; 1986 c 444

**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. If the state or a municipality as defined in section 466.01 is jointly liable, and its fault is less than 35 percent, it is jointly and severally liable for an amount no greater than twice the amount of fault.

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 the person whose fault is less.

**History:** 1978 c 738 s 8; 1986 c 444; 1986 c 455 s 85

#### **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 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.

**History:** 1978 c 738 s 9

#### **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 the person 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 the person's 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 the person's 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 the claimant's 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.

**History:** 1978 c 738 s 10; 1986 c 444

#### **604.05 GOOD SAMARITAN LAW.**

Subdivision 1. **Duty to assist.** Any person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. Any person who violates this section is guilty of a petty misdemeanor.

Subd. 2. **General immunity from liability.** Any person who, without compensation or the expectation of compensation renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance unless that person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance. Any person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering such care, advice, or assistance, shall be excluded from the protection of this section.

For the purposes of this section, the scene of an emergency shall be those areas not within the confines of a hospital or other institution which has hospital facilities, or an office of a person licensed to practice one or more of the healing arts pursuant to chapter 147, 148, 150A, or 153. The scene of an emergency includes areas threatened by or exposed to spillage, seepage, fire, explosion, or other release of hazardous materials.

For the purposes of this section, "person" includes a public or private nonprofit volunteer firefighter, volunteer police officer, volunteer ambulance attendant, volunteer first provider of emergency medical services, and any partnership, corporation, association, or other entity.

For the purposes of this section, compensation does not include payments, reimbursement for expenses, or pension benefits paid to members of volunteer organizations.

**History:** 1971 c 218 s 1; 1978 c 542 s 1; 1983 c 319 s 1; 1984 c 429 s 1; 1985 c 104 s 1; 1986 c 444

#### **604.06 FIREMAN'S RULE.**

The common law doctrine known as the fireman's rule shall not operate to deny any peace officer, as defined in section 626.84, subdivision 1, clause (c), or section 352E.01, subdivision 2, a recovery in any action at law or authorized by statute.

**History:** 1982 c 601 s 3; 1983 c 159 s 1

#### **604.07 DISCOUNT, FUTURE DAMAGE AWARDS.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them.

(b) "Economic loss" means all pecuniary harm for which damages are recoverable,

including, but not limited to, medical expenses, loss of earnings, and loss of earning capacity.

(c) "Future damages" means all damages which the trier of fact finds will accrue after the damage findings are made.

(d) "Intangible loss" means embarrassment, emotional distress, and loss of consortium.

(d) "Noneconomic loss" means pain, disability, and disfigurement.

(e) "Past damages" means all damages that have accrued when the damage findings are made.

Subd. 2. **Discount required.** In all actions seeking damages for personal injury, wrongful death, or loss of means of support, awards of all future damages, including economic, noneconomic and intangible loss, reasonably certain to occur must be discounted to present value as provided in this section.

Subd. 3. **Future damages; evidence.** The amount of all future damages, including economic, noneconomic and intangible loss reasonably certain to occur, must be ascertained at the time of trial without reference to projected inflationary or noninflationary changes. Evidence of noninflationary changes in earnings or earning capacity that are reasonably certain to occur are admissible, but this evidence is limited to the present value of the future changes without regard to inflationary changes. Projected increases in earnings or earning capacity dependent upon general economic statistics are not admissible.

Subd. 4. **Discount rate.** The award calculated under subdivision 3 must be reduced to present value at the time of trial by application of a discount rate equal to:

(1) the average rate of interest on judgments under section 549.09 for the five calendar years immediately preceding the commencement of trial, rounded to the nearest one-tenth, less

(2) the average increase in the Consumer Price Index for all Urban Consumers, all items, as published by the United States Department of Labor, Bureau of Labor Statistics, rounded to the nearest one-tenth, for the same five-year period. If the Labor Department statistics are not published by the time of trial, the court shall employ the average increase over the most recent five-year period available in the published statistics.

In no instance may the discount rate fall below two percent or rise above six percent.

**History:** 1986 c 455 s 86