

CHAPTER 604

CIVIL LIABILITY

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ACTIONS INVOLVING FAULT GENERALLY

604.01 COMPARATIVE FAULT; EFFECT.

Subdivision 1. **Scope of application.** Contributory fault does not bar recovery in an action by any person or the person's legal representative to recover damages for fault resulting in death, in injury to person or property, or in economic loss, if the contributory fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed must 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 or primary assumption of risk, misuse of a product and unreasonable failure to avoid an injury or to mitigate damages, and the defense of complicity under section 340A.801. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault. The doctrine of last clear chance is abolished.

Evidence of unreasonable failure to avoid aggravating an injury or to mitigate damages may be considered only in determining the damages to which the claimant is entitled. It may not be considered in determining the cause of an accident.

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 or economic loss; 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 or for economic loss does 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; 1990 c 555 s 19-21

604.02 APPORTIONMENT OF DAMAGES.

Subdivision 1. **Joint liability.** When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:

- (1) a person whose fault is greater than 50 percent;
- (2) two or more persons who act in a common scheme or plan that results in injury;
- (3) a person who commits an intentional tort; or

(4) a person whose liability arises under chapters 18B - pesticide control, 115 - water pollution control, 115A - waste management, 115B - environmental response and liability, 115C - leaking underground storage tanks, and 299J - pipeline safety, public nuisance law for damage to the environment or the public health, any other environmental or public health law, or any environmental or public health ordinance or program of a municipality as defined in section 466.01.

This section applies to claims arising from events that occur on or after August 1, 2003.

Subd. 2. **Reallocation of uncollectible amounts generally.** 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. **Product liability; reallocation of uncollectible amounts.** 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; 1988 c 503 s 3; 1989 c 209 art 1 s 44; 2003 c 71 s 1

604.03 USEFUL LIFE OF PRODUCT.

Subdivision 1. **Expiration as defense.** 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. **Determination.** 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.

Subdivision 1. **Persons receiving notice; timing.** 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. **Unreasonable delay.** 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. **Failure to notify.** 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 [Repealed, 1994 c 623 art 5 s 3]

FIREMAN'S RULE

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 public safety officer, as defined in section 299A.41, subdivision 4, a recovery in any action at law or authorized by statute.

History: 1982 c 601 s 3; 1983 c 159 s 1; 1987 c 384 art 1 s 45; 1991 c 199 art 2 s 28

604.07 [Repealed, 1988 c 503 s 5]

604.08 [Repealed, 1994 c 623 art 5 s 3]

604.09 [Repealed, 1994 c 623 art 5 s 3]

ECONOMIC LOSS

604.10 ECONOMIC LOSS ARISING FROM THE SALE OF GOODS.

(a) Economic loss that arises from a sale of goods that is due to damage to tangible property other than the goods sold may be recovered in tort as well as in contract, but economic loss that arises from a sale of goods between parties who are each merchants in goods of the kind is not recoverable in tort.

(b) Economic loss that arises from a sale of goods, between merchants, that is not due to damage to tangible property other than the goods sold may not be recovered in tort.

(c) The economic loss recoverable in tort under this section does not include economic loss due to damage to the goods themselves.

(d) The economic loss recoverable in tort under this section does not include economic loss incurred by a manufacturer of goods arising from damage to the manufactured goods and caused by a component of the goods.

(e) This section shall not be interpreted to bar tort causes of action based upon fraud or fraudulent or intentional misrepresentation or limit remedies for those actions.

History: 1991 c 352 s 2; 1993 c 91 s 1; 1Sp1998 c 2 s 1

604.101 ECONOMIC LOSS DOCTRINE.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Buyer" means a person who buys or leases or contracts to buy or lease the goods that are alleged to be defective or the subject of a misrepresentation.

(c) "Goods" means tangible personal property, regardless of whether that property is incorporated into or becomes a component of some different property.

(d) "Period of restoration" means the time a reasonable person would find reasonably necessary to repair, replace, rebuild, or restore other tangible property and real property harmed by the defect in the goods to a quality level reasonably equivalent to the quality level that existed before the defect caused the harm, but excluding in all circumstances:

- (1) time necessary to repair, replace, rebuild, or restore the goods themselves;
- (2) delays or other impediments resulting from a difficulty in obtaining financing; and
- (3) delays or other impediments resulting from zoning or environmental requirements imposed by law that did not apply to the use of the harmed property immediately before the harm occurred.

(e) "Product defect tort claim" means a common law tort claim for damages caused by a defect in the goods but does not include statutory claims. A defect in the goods includes a failure to adequately instruct or warn.

(f) "Seller" means a person who sells or leases or contracts to sell or lease the goods that are alleged to be defective or the subject of a misrepresentation.

(g) If a good is a component of a manufactured good, harm caused by the component good to the manufactured good is not harm to tangible personal property other than the component good.

Subd. 2. **Scope.** This section does not apply to claims for injury to the person. This section applies to any claim by a buyer against a seller for harm caused by a defect in the goods sold or leased, or for a misrepresentation relating to the goods sold or leased:

- (1) regardless of whether the seller and the buyer were in privity regarding the sale or lease of the goods; and
- (2) regardless of whether article 2 or article 2A of the Uniform Commercial Code under chapter 336 governed the sale or lease that caused the seller to be a seller and buyer to be a buyer.

Subd. 3. **Limits on product defect tort claims.** A buyer may not bring a product defect tort claim against a seller for compensatory damages unless a defect in the goods sold or leased caused harm to the buyer's tangible personal property other than the goods or to the buyer's real property. In any claim brought under this subdivision, the buyer may recover only for:

- (1) loss of, damage to, or diminution in value of the other tangible personal property or real property, including, where appropriate, reasonable costs of repair, replacement, rebuilding, and restoration;
- (2) business interruption losses, excluding loss of good will and harm to business reputation, that actually occur during the period of restoration; and
- (3) additional family, personal, or household expenses that are actually incurred during the period of restoration.

Subd. 4. **Limits on common law misrepresentation claims.** A buyer may not bring a common law misrepresentation claim against a seller relating to the goods sold or leased unless the misrepresentation was made intentionally or recklessly.

Subd. 5. **Relation to common law.** The economic loss doctrine applies to claims only as stated in this section. This section does not alter the elements of a product defect tort claim or a common law claim for misrepresentation.

Subd. 6. **Application; effect on existing statute.** This section governs claims by a buyer against a seller if the sale or lease that caused the seller to be a seller and the sale or lease that caused the buyer to be a buyer both occurred on or after August 1, 2000. Section 604.10 does not apply to a claim governed by this section.

History: 2000 c 358 s 1

MEDICAL MALPRACTICE

604.11 MEDICAL MALPRACTICE CASES.

Subdivision 1. **Discovery.** Pursuant to the time limitations set forth in the Minnesota Rules of Civil Procedure, the parties to any medical malpractice action may exchange the uniform interrogatories in subdivision 3 and ten additional nonuniform interrogatories. Any subparagraph of a nonuniform interrogatory will be treated as one nonuniform interrogatory. By stipulation of the parties, or by leave of the court upon a showing of good cause, more than ten additional nonuniform interrogatories may be propounded by a party. In addition, the parties may submit a request for production of documents pursuant to rule 34 of the Minnesota Rules of Civil Procedure.

Subd. 2. **Alternative dispute resolution.** At the time a trial judge orders a case for trial, the court shall require the parties to discuss and determine whether a form of alternative dispute resolution would be appropriate or likely to resolve some or all of the issues in the case. Alternative dispute resolution may include arbitration, mediation, summary jury trial, or other alternatives suggested by the court or parties, and may be either binding or nonbinding. All parties must agree unanimously before alternative dispute resolution proceeds.

Subd. 3. **Uniform interrogatories.** (a) Uniform plaintiff's interrogatories to the defendant are as follows:

PLAINTIFF'S INTERROGATORIES TO DEFENDANT

INTERROGATORY NO. 1:

Please attach a complete curriculum vitae for Dr. (.....), M.D., which should include, but is not limited to, the following information:

- a. Name;
- b. Office address;
- c. Name of practice;
- d. Identities of partners or associates, including their names, specialties, and how long they have been associated with Dr. (.....);
- e. Specialty of Dr. (.....);
- f. Age;
- g. The names and dates of attendance at any medical schools;

h. Full information as to internship or residency, including the place and dates of the internship or residency as well as any specialized fields of practice engaged in during such internship or residency;

i. The complete history of the practice of Dr. (.....) from and after medical school, setting forth the places where Dr. (.....) practiced medicine, the persons with whom Dr. (.....) was associated, the dates of the practice, and the reasons for leaving the practice;

j. Full information as to any board certifications Dr. (.....) may hold, including the field of specialty and the dates of the certifications and any recertifications;

k. Identifying the medical societies and organizations to which Dr. (.....) belongs, giving full information as to any offices held in the organizations;

l. Identifying all professional journal articles, treatises, textbooks, abstracts, speeches, or presentations which Dr. (.....) has authored or contributed to; and

m. Any other information which describes or explains the training and experience of Dr. (.....) for the practice of medicine.

INTERROGATORY NO. 2:

Has Dr. (.....) been the subject of any professional disciplinary actions of any kind and, if so:

State whether Dr. (.....)'s license to practice medicine has ever been revoked or publicly limited in any way and, if so, give the date and the reasons for such revocation or restriction.

INTERROGATORY NO. 3:

Please set forth a listing by author, title, publisher, and date of publication of all the medical texts referred to by Dr. (.....) with respect to the practice of medicine during the past five years.

INTERROGATORY NO. 4:

Please set forth a complete listing of the medical and professional journals to which Dr. (.....) subscribes or has subscribed within the past five years.

INTERROGATORY NO. 5:

As to each expert whom you expect to call as a witness at trial, please state:

- a. The expert's name, address, occupation, and title;
- b. The expert's field of expertise, including subspecialties, if any;
- c. The expert's education background;
- d. The expert's work experience in the field of expertise;
- e. All professional societies and associations of which the expert is a member;
- f. All hospitals at which the expert has staff privileges of any kind;
- g. All written publications of which the expert is the author, giving the title of the publication and when and where it was published.

INTERROGATORY NO. 6:

With respect to each person identified in answer to the foregoing interrogatory, state:

- a. The subject matter on which the person is expected to testify;
- b. The substance of the facts and opinions to which the person is expected to testify; and

c. A summary of the grounds for each opinion, including the specific factual data upon which the opinion will be based.

INTERROGATORY NO. 7:

Please state whether there is any policy of insurance that will provide coverage to the defendant should liability attach on the basis of the allegations contained in the plaintiff's Complaint. If so, state with regard to each policy applicable:

- a. The name and address of the insurer;
- b. The exact limits of coverage applicable;
- c. Whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company.

Please attach copies of each policy to your Answers.

INTERROGATORY NO. 8:

State the full name, present address, occupation, age, present employer, and the present employer's address of each physician, nurse, or other medical personnel in the employ of the defendant or defendant's professional association who treated, cared for, examined, or otherwise attended (name) from (date 1), through (date 2). With regard to every individual, please state:

- a. Each date upon which the individual attended (name);
- b. The nature of the treatment or care rendered (name) on each date;
- c. The qualifications and area of specialty of each individual; and
- d. The present address of each individual.

In responding to this interrogatory, referring plaintiff's counsel to medical records will not be deemed to be a sufficient answer as plaintiff's counsel has reviewed the medical records and is not able to determine the identity of the individuals.

INTERROGATORY NO. 9: (Hospital defendant only)

Please state the name, address, telephone number, and last known employer of the nursing supervisor for the shifts set forth in the preceding interrogatory.

INTERROGATORY NO. 10:

Please identify by name and current or last known address and telephone number each and every person who has or claims to have knowledge of any facts relevant to the issues in this lawsuit, stating in detail all facts each person has or claims to have knowledge of.

INTERROGATORY NO. 11:

a. Have any statements been taken from nonparties or the plaintiff(s) pertaining to this claim? For purposes of this request, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantial verbatim recital or an oral statement by the person making it and contemporaneously recorded. With regard to each statement, state:

1. The name and address of each person making a statement;
2. The date on which the statement was made;
3. The name and address of the person or persons taking each statement; and

4. The subject matter of each statement.
- b. Attach a copy of each statement to the answers to these interrogatories.
- c. If you claim that any information, document, or thing sought or requested is privileged, protected by the work product doctrine, or otherwise not discoverable, please:
 1. Identify each document or thing by date, author, subject matter, and recipient;
 2. State in detail the legal and factual basis for asserting said privilege, work product protection, or objection, or refusing to provide discovery as requested.

INTERROGATORY NO. 12:

Do you or anyone acting on your behalf know of any photographs, films, or videotapes depicting? If so, state:

- a. The number of photographs or feet of film or videotape;
- b. The places, objects, or persons photographed, filmed, or videotaped;
- c. The date the photographs, film, or videotapes were taken;
- d. The name, address, and telephone number of each person who has the original or copy.

Please attach copies of any photographs or videotapes.

INTERROGATORY NO. 13:

If you claim that injuries to plaintiff complained of in plaintiff's Complaint were contributed to or caused by plaintiff or any other person, including any other physician, hospital, nurse, or other health care provider, please state:

- a. The facts upon which you base the claim;
- b. The name, current address, and current employer of each person whom you allege was or may have been negligent.

INTERROGATORY No. 14:

Please state the name or names of the individuals supplying the information contained in your Answers to these Interrogatories. In addition, please state these individuals' current addresses, places of employment, and their current position at their place of employment.

INTERROGATORY NO. 15:

Does defendant have knowledge of any conversations or statements made by the plaintiff(s) concerning any subject matter relative to this action? If so, please state:

- a. The name and last known address of each person who claims to have heard such conversations or statements;
- b. The date of such conversations or statements;
- c. The summary or the substance of each conversation or statement.

INTERROGATORY NO. 16:

Did the defendant, the defendant's agents, or employees conduct a surveillance of the plaintiff(s)? If so, state:

- a. Name, address, and occupation of the person who conducted each surveillance;
- b. Name and address of the person who requested each surveillance to be made;
- c. Date or dates on which each surveillance was conducted;

- d. Place or places where each surveillance was performed;
- e. Information or facts discovered in the surveillance;
- f. Name and address of the person now having custody of each written report, photographs, videotapes, or other documents concerning each surveillance.

INTERROGATORY NO. 17:

Are you aware of any person you may call as a witness at the trial of this action who may have or claims you have any information concerning the medical, mental, or physical condition of the plaintiff(s) prior to the incident in question? If so, state:

- a. The name and last known address of each person and your means of ascertaining the present whereabouts of each person;
- b. The occupation and employer of each person;
- c. The subject and substance of the information each person claims to have.

INTERROGATORY NO. 18:

As to any affirmative defenses you allege, state the factual basis of and describe each affirmative defense, the evidence which will be offered at trial concerning any alleged affirmative defense, including the names of any witnesses who will testify in support thereof, and the descriptions of any exhibits which will be offered to establish each affirmative defense.

INTERROGATORY NO. 19:

(a) Do you contend that any entries in the answering defendant's medical/hospital records are incorrect or inaccurate? If so, state:

- a. The precise entry(ies) that you think are incorrect or inaccurate;
- b. What you contend the correct or accurate entry(ies) should have been;
- c. The name, address, and employer of each and every person who has knowledge pertaining to a. and b.;
- d. A description, including the author and title of each and every document that you claim supports your answer to a. and b.;
- e. The name, address, and telephone number of each and every person you intend to call as a witness in support of your contention.

(b) Uniform defendant's interrogatories to the plaintiff for personal injury cases are as follows:

DEFENDANT'S INTERROGATORIES TO PLAINTIFF (PERSONAL INJURY)

1. State your full name, address, date of birth, marital status, and Social Security number.
2. If you have been employed at any time in the past ten years, with respect to this period state the names and addresses of each of your employers, describe the nature of your work, and state the approximate dates of each employment.
3. If you have ever been a party to a lawsuit where you claimed damages for injury to your person, state the title of the suit, the court file number, the date of filing, the name and address of any involved insurance carrier, the kind of claim, and the ultimate disposition of the same. (This is meant to include workers' compensation and Social Security disability claims.)
4. Identify by name and address each and every physician, surgeon, medical practitioner, or other health care practitioner whom you consulted or who provided advice, treatment, or care

for you at any time within the last ten years and, with respect to each contract, consultation, treatment, or advice, describe the same with particularity and indicate the reasons for the same.

5. State the name and address of each and every hospital, treatment facility, or institution in which plaintiff has been confined for any reason at any time, and set forth with particularity the reasons for each confinement and/or treatment and the dates of each.

6. Itemize all special damages which you claim in this case and specify, where appropriate, the basis and reason for your calculation as to each item of special damages.

7. List all payments related to the injury or disability in question that have been made to you, or on your behalf, from "collateral sources" as that term is defined in Minnesota Statutes, section 548.251.

8. List all amounts that have been paid, contributed, or forfeited by, or on behalf of, you or members of your immediate family for the two-year period immediately before the accrual of this action to secure the right to collateral source benefits that have been made to you or on your behalf.

9. Do you contend any of the following:

a. That defendant did not possess that degree of skill and learning which is normally possessed and used by medical professionals in good standing in a similar practice and under like circumstances;

b. That defendant did not exercise that degree of skill and learning which is normally used by medical professionals in good standing in a similar practice and under like circumstances.

10. If your answer to any part of the foregoing interrogatory is yes, with respect to each answer:

a. Specify in detail each contention;

b. Specify in detail each act or omission of defendant which you contend was a departure from the degree of skill and learning normally used by medical professionals in a similar practice and under like circumstances;

c. Specify in detail the conduct of defendant as you claim it should have been;

d. Specify in detail each fact known to you and your attorneys upon which you base your answers to interrogatories 9 and 10.

11. If you claim defendant failed to disclose to you any risk concerning the involved medical care and treatment which, if disclosed, would have resulted in your refusing to consent to the medical care or treatment, then:

a. State in detail each and every thing defendant did tell you concerning the risks of the involved medical care and treatment, giving the approximate dates thereof and identifying all persons in attendance;

b. Describe each and every risk which you claim defendant should have, but failed to, disclose to you;

c. Describe in detail precisely what you claim defendant should have said to you, but failed to say, concerning the risks of the involved medical care and treatment;

d. Explain in detail all facts and reasons upon which you base the claim that, if the foregoing risks were explained to you, you would not have consented to the involved medical care and treatment.

12. Please identify by name and current or last known address and telephone number each and every person who has or claims to have any knowledge of any facts relevant to the issues in this lawsuit, stating in detail all facts each person has or claims to have knowledge of.

13. As to each expert whom you expect to call as a witness at trial, please state:

- a. The expert's name, address, occupation, and title;
- b. The expert's field of expertise, including subspecialties, if any;
- c. The expert's education background;
- d. The expert's work experience in the field of expertise;
- e. All professional societies and associations of which the expert is a member;
- f. All hospitals at which the expert has staff privileges of any kind;
- g. All written publications of which the expert is the author, giving the title of the publication and when and where it was published.

14. With respect to each person identified in answer to the foregoing interrogatory, state:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify; and
- c. A summary of the grounds for each opinion, including the specific factual data upon which the opinion will be based.

15. Have any statements been taken from any defendant or nonparty pertaining to this claim? For purposes of this request, a statement previously made is: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantial verbatim recital or an oral statement by the person making it and contemporaneously recorded. With regard to each statement, state:

- a. The name and address of each person making a statement;
- b. The date on which the statement was made;
- c. The name and address of the person or persons taking each statement; and
- d. The subject matter of the statement;
- e. Attach a copy of each statement to the answers to these interrogatories.
- f. If you claim that any information, document, or thing sought or requested is privileged, protected by the work product doctrine, or otherwise not discoverable, please:
 1. Identify each document or thing by date, author, subject matter, and recipient;
 2. State in detail the legal and factual basis for asserting said privilege, work product protection, or objection, or refusing to provide discovery as requested.

(c) Uniform defendant's interrogatories to the plaintiff for wrongful death cases are as follows:

DEFENDANT'S INTERROGATORIES TO PLAINTIFF (WRONGFUL DEATH)

1. State the full name, age, present occupation, business address, present residence address, and address for a period of ten years prior to the present date for each heir or next of kin (including the Trustee) on whose behalf this action has been commenced.
2. Set forth the date of birth and place of birth of the decedent.

3. Set forth the date of birth and place of birth of the decedent's surviving spouse.
4. Set forth the names, date of birth, and places of birth of any children of decedent.
5. Set forth the names, addresses, and dates of birth of all heirs and next of kin of decedent and set forth the relationship of each individual to decedent.
6. Set forth the date of marriage between decedent and decedent's surviving spouse and the place of the marriage.
7. Set forth whether or not there were any proceedings for a legal separation or divorce instituted between decedent and decedent's surviving spouse and, if so, set forth the dates that the proceedings were instituted, the result of the proceedings, and the court in which the proceedings were instituted.
8. Set forth whether or not decedent was ever married to anyone other than decedent's surviving spouse and if so, set forth the names of any other spouse or spouses and the inclusive dates of any other marriages.
9. Set forth whether or not decedent's surviving spouse has ever been married to anyone other than decedent and, if so, set forth the names of any other spouses and the inclusive dates of any other marriages.
10. If you claim defendant failed to disclose to you any risk concerning the involved medical care and treatment which, if disclosed, would have resulted in the decedent's refusing to consent to the medical care or treatment, then:
 - a. State in detail each and every thing defendant did tell you concerning the risks of the involved medical care and treatment, giving the approximate dates thereof and identify all persons in attendance;
 - b. Describe each and every risk which you claim defendants should have, but failed to, disclose to you;
 - c. Describe in detail precisely what you claim defendant should have said to you, but failed to say, concerning the risks of the involved medical care and treatment;
 - d. Explain in detail all facts and reasons upon which you base the claim that, if the foregoing risks were explained to you, you would not have consented to the involved medical care and treatment.
11. Was the deceased employed at the time of death?
12. If the answer to Interrogatory No. 10 is yes, indicate the following:
 - a. The name and address of the deceased's employer and the nature of the employment;
 - b. The amount of earnings from the employment;
 - c. Defendant requests copies of the decedent's federal and state income tax return for the past five years.
13. If decedent was self-employed for any period of time during the ten-year period of time immediately preceding decedent's death, set forth the following:
 - a. The inclusive dates of the self-employment;
 - b. A specific and detailed description of the nature of the self-employment;
 - c. The business name and address under which decedent operated; and
 - d. A specific and detailed description of decedent's earnings from the self-employment.

14. Set forth in detail a chronological education history of decedent including the name and address of each school attended, the inclusive dates of attendance, the date of graduation, a description of any degrees awarded, a description of the major area of study and the grade point average upon graduation.

15. Did the decedent make any contribution of money, property, or other items having a money worth toward the support, maintenance, or well-being of any next of kin and, if so, please itemize the following:

- a. The amount and nature of the contribution;
- b. The date(s) upon which each contribution was made;
- c. The person(s) receiving each contribution;
- d. The period of time over which the contributions were made;
- e. The regularity or irregularity of the contributions;

f. Identify by date, author, type, recipient, and present custodian each and every document referring to or otherwise evidencing each contribution.

16. Identify by name and address each and every physician, surgeon, medical practitioner, or other health care practitioner whom the decedent consulted or who provided advice, treatment, or care for the decedent at any time within ten years prior to death and, with respect to the contact, consultation, treatment, or advice, describe the same with particularity and indicate the reasons for the same.

17. State the name and address of each and every hospital, treatment facility, or institution in which the decedent has been confined for any reason at any time, and set forth with particularity the reasons for each confinement and/or treatment and the dates of each.

18. Itemize all special damages which you claim in this case and specify, where appropriate, the basis and reason for your calculation as to each item of special damages.

19. List any payment related to the injury or disability in question made to you, or on your behalf, from "collateral sources" as that term is defined in Minnesota Statutes, section 548.251.

20. List all amounts that have been paid, contributed or forfeited by, or on behalf of, you or members of your immediate family for the two-year period immediately before the accrual of this action to secure the right to collateral source benefits that have been made to you or on your behalf.

21. Do you contend any of the following:

a. That any of the defendants did not possess that degree of skill and learning which is normally possessed and used by medical professionals in good standing in a similar practice and under like circumstances? If so, identify the defendants;

b. That any of the defendants did not exercise that degree of skill and learning which is normally used by medical professionals in good standing in a similar practice and under like circumstances? If so, identify the defendants.

22. If your answer to any part of the foregoing interrogatory is yes, with respect to each answer:

a. Specify in detail your contention;

b. Specify in detail each act or omission of each defendant which you contend was a departure from that degree of skill and learning normally used by medical professionals in a similar practice and under like circumstances.

23. Please identify by name and current or last known address and telephone number of each and every person who has or claims to have any knowledge of any facts relevant to the issues in this lawsuit, stating in detail all facts each person has or claims to have knowledge of.

24. As to each expert whom you expect to call as a witness at trial, please state:

- a. The expert's name, address, occupation, and title;
- b. The expert's field of expertise, including subspecialties, if any;
- c. The expert's education background;
- d. The expert's work experience in the field of expertise;
- e. All professional societies and associations of which the expert is a member;
- f. All hospitals at which the expert has staff privileges of any kind;
- g. All written publications of which the expert is the author, giving the title of the publication and when and where it was published.

25. With respect to each person identified in the foregoing interrogatory, state:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify; and
- c. A summary of the grounds for each opinion, including the specific factual data upon which the opinion will be based.

26. Set forth in detail anything said or written by which plaintiff claims to be relevant to any of the issues in this lawsuit, identifying the time and place of each statement, who was present, and what was said by each person who was present.

27. Have any statements been taken from any defendant or nonparty pertaining to this claim? For purposes of this request, a statement previously made is: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantial verbatim recital or an oral statement by the person making it and contemporaneously recorded. With regard to each statement, state:

- a. The name and address of each person making a statement;
- b. The date on which the statement was made;
- c. The name and address of the person or persons taking each statement; and
- d. The subject matter of each statement;
- e. Attach a copy of each statement to the answers to these interrogatories;
- f. If you claim that any information, document or thing sought or requested is privileged, protected by the work product doctrine, or otherwise not discoverable, please:
 1. Identify each document or thing by date, author, subject matter, and recipient;
 2. State in detail the legal and factual basis for asserting said privilege, work product protection, or objection, or refusing to provide discovery as requested.

History: 1992 c 549 art 8 s 2

WORTHLESS CHECKS

604.113 ISSUANCE OF WORTHLESS CHECK.

Subdivision 1. **Definitions.** (a) The definitions provided in this subdivision apply to this section.

(b) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(c) "Credit" means an arrangement or understanding with the drawee for the payment of the check.

(d) "Dishonor" has the meaning given in section 336.3-502, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.

(e) "Payee" or "holder" includes an agent of the payee or holder.

Subd. 2. **Acts constituting.** Whoever issues any check that is dishonored is liable for the following penalties:

(a) A service charge, not to exceed \$30, may be imposed immediately on any dishonored check by the payee or holder of the check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check on behalf of the payee or holder, up to the entire amount of the service charge may be retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check. The displayed notice must also include a provision notifying the issuer of the check that civil penalties may be imposed for nonpayment.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the check and the reason for nonpayment. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for nonpayment after 30 days;

(2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and

(3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for

dishonored checks, which do not exceed the charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

Subd. 3. **Notice of dishonor required.** Notice of nonpayment or dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check.

The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4. **Proof of identity.** The check is prima facie evidence of the identity of the issuer if the person receiving the check:

(a) records the following information about the issuer on the check, unless it is printed on the face of the check:

- (1) name;
- (2) home or work address;
- (3) home or work telephone number; and
- (4) identification number issued pursuant to section 171.07;

(b) compares the issuer's physical appearance, signature, and the personal information recorded on the check with the issuer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

Subd. 5. **Defenses.** Any defense otherwise available to the issuer also applies to liability under this section.

History: 1983 c 225 s 6; 1984 c 576 s 26; 1985 c 140 s 1,2; 1991 c 256 s 8,9; 1992 c 565 s 113; 1996 c 414 art 1 s 41; 1997 c 157 s 65,66; 1999 c 218 s 1; 2001 c 204 s 1; 2004 c 174 s 3

OTHER ACTIONS

604.12 RESTRICTIONS ON DENYING ACCESS TO PLACES OF PUBLIC ACCOMMODATION; CIVIL ACTIONS.

Subdivision 1. **Definitions.** As used in this section:

(1) "place of public accommodation" has the meaning given in section 363A.03, subdivision 34, but excludes recreational trails;

(2) "criminal gang" has the meaning given in section 609.229, subdivision 1; and

(3) "obscene" has the meaning given in section 617.241, subdivision 1.

Subd. 2. **Prohibition.** (a) A place of public accommodation may not restrict access, admission, or usage to a person solely because the person operates a motorcycle or is wearing clothing that displays the name of an organization or association.

(b) This subdivision does not prohibit the restriction of access, admission, or usage to a person because:

(1) the person's conduct poses a risk to the health or safety of another or to the property of another; or

(2) the clothing worn by the person is obscene or includes the name or symbol of a criminal gang.

Subd. 3. **Civil cause of action.** A person injured by a violation of subdivision 2 may bring an action for actual damages, punitive damages under sections 549.191 and 549.20 in an amount not to exceed \$500, injunctive relief, and reasonable attorney fees in an amount not to exceed \$500.

Subd. 4. **Violation not a crime.** Notwithstanding section 645.241, a violation of subdivision 2 is not a crime.

History: 1998 c 367 art 11 s 18

604.13 DESTRUCTION OF FIELD CROP PRODUCTS, ANIMALS, ORGANISMS, OR CELLS; CIVIL LIABILITY.

Subdivision 1. **Liability.** No person other than the owner, designee, or agent may willfully and knowingly damage or destroy any field crop, animal, organism, or cell that is grown for testing or research purposes in conjunction or coordination with a private research facility or a university or a federal, state, or local government agency. A person who violates this subdivision is liable for three times the value of the crop, animal, organism, or cell damaged or destroyed, as provided in subdivisions 2 and 3. This section does not apply to crops, animals, organisms, or cells damaged or destroyed by emergency vehicles and personnel acting in a reasonable and prudent manner.

Subd. 2. **Damages; factors to consider.** In awarding damages under this section, the court shall consider the market and research value of the crop, animal, organism, or cell prior to damage or destruction, and production, research, testing, replacement, and development costs directly related to the crop, animal, organism, or cell that has been damaged or destroyed as part of the value.

Subd. 3. **Damages; limit.** Damages available under this section are limited to:

(1) three times the market and research value of the crop, animal, organism, or cell prior to damage or destruction plus three times the actual damages involving production, research, testing, replacement, and development costs directly related to the crop, animal, organism, or cell that has been damaged or destroyed; and

(2) an amount up to \$100,000 to compensate for delays in completing testing or research resulting from a violation of subdivision 1.

History: 2002 c 348 s 1

604.14 CIVIL LIABILITY FOR THEFT.

Subdivision 1. **Liability for theft of property.** A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either \$50 or up to 100 percent of its value when stolen, whichever is greater. If the property is merchandise stolen from a retail store, its value is the retail price of the merchandise in the store when the theft occurred.

Subd. 2. **Notice.** In order to recover under subdivision 1 for the theft of a shopping cart, a store must have posted at the time of the theft a conspicuous notice describing the liability under subdivision 1.

Subd. 3. **Liability of parent or guardian.** Section 540.18 applies to this section, except that recovery is not limited to special damages.

Subd. 4. **Criminal action.** The filing of a criminal complaint, conviction, or guilty plea is not a prerequisite to liability under this section. Payment or nonpayment may not be used as evidence in a criminal action.

Subd. 5. **Recovery of property.** The recovery of stolen property by a person does not affect liability under this section, other than liability for the value of the property.

Subd. 6. **Right to demand payment.** A person may make a written demand for payment for the liability imposed by this section before beginning an action, including a copy of this section and a description of the liability contained in this section.

History: 1988 c 481 s 1; 1989 c 224 s 2; 1989 c 262 s 4

604.15 CIVIL LIABILITY FOR RECEIVING MOTOR FUEL WITHOUT PAYING.

Subdivision 1. **Definitions.** For purposes of this section:

- (1) "motor fuel" means a liquid, regardless of its properties, used to propel a vehicle;
- (2) "retailer" means a person that sells motor fuel at retail; and
- (3) "vehicle" means a motor vehicle or watercraft that is self-propelled and that uses motor fuel for propulsion.

Subd. 2. **Acts constituting.** (a) The owner of a vehicle that receives motor fuel that was not paid for is liable to the retailer for the price of the motor fuel received and a service charge of \$30. This charge may be imposed immediately upon the mailing of the notice under subdivision 3, if notice of the service charge was conspicuously displayed on the premises from which the motor fuel was received. The notice must include a statement that additional civil penalties will be imposed if payment is not received within 30 days. Only one service charge may be imposed under this paragraph for each incident. If a law enforcement agency obtains payment for the motor fuel on behalf of the retailer, the service charge may be retained by the law enforcement agency for its expenses.

(b) If the price of the motor fuel received is not paid within 30 days after the retailer has mailed notice under subdivision 3, the owner is liable to the retailer for the price of the motor fuel received, the service charge as provided in paragraph (a), plus a civil penalty not to exceed \$100 or the price of the motor fuel, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the fuel taken and the reason for the nonpayment. The retailer shall also be entitled to:

(1) interest at the legal rate for judgments under section 549.09 from the date of nonpayment; and

(2) reasonable attorney fees, but not to exceed \$500.

The civil penalty may not be imposed until 30 days after the mailing of the notice under subdivision 3.

Subd. 3. **Notice of nonpayment.** Notice of nonpayment that includes a citation to this section and a description of the penalties contained in it shall be sent by the retailer to the owner by regular mail, supported by an affidavit of service by mailing, to the address indicated by records on the vehicle under section 86B.401 or 168.346. The notice must include a signed statement by the employee who reported the act describing what the employee observed and the license number of the motor vehicle. Failure of the owner to receive a notice is not a defense to liability under this section.

An affidavit of service by mailing must be retained by the retailer.

Subd. 4. **Notice of dispute.** If, within the 30-day period referred to in subdivision 2, paragraph (b), the owner sends written notice to the retailer disputing the retailer's claim that the owner received motor fuel from the retailer without paying for it, the retailer may collect the price of the motor fuel and the civil penalties imposed by this section only pursuant to a judgment rendered by a court of competent jurisdiction.

Upon receipt of the notice, the retailer shall cease all collection efforts.

Subd. 4a. **Trade association services.** A trade association recognized by the Internal Revenue Service as an exempt organization under section 501(c)(6) of the Internal Revenue Code may, on behalf of a member retailer, give and receive notices authorized by this section and collect payments for motor fuel and the service charge specified under subdivision 2.

Subd. 5. **Not a bar to criminal liability.** Civil liability under this section does not preclude criminal liability under applicable law.

History: 2001 c 204 s 2; 2005 c 136 art 17 s 6,7; 2012 c 173 s 3,4

604.16 LIABILITY FOR LOSS SUFFERED AS A RESULT OF PEACE OFFICER PURSUIT; PENALTIES.

Subdivision 1. **Flee; definition.** For purposes of this section, the term "flee" means to increase speed, extinguish motor vehicle headlights or taillights, or to use other means with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.

Subd. 2. **Peace officer; definition.** For purposes of this section, "peace officer" means an employee of a political subdivision or state law enforcement agency who is licensed by the Minnesota Board of Peace Officer Standards and Training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest, and shall also include the Minnesota State Patrol and Minnesota conservation officers.

Subd. 3. **Liability for loss.** If a peace officer is acting in the lawful discharge of an official duty, a person fleeing the peace officer by means of a motor vehicle or motorcycle is liable for all bodily injury and property damage suffered by any other person, except another person fleeing

from a peace officer, arising out of the operation or use of a pursuing peace officer's vehicle, unless the peace officer is not exercising reasonable care.

History: *1981 c 37 s 2; 1981 c 312 s 3; 1984 c 445 s 1*

604.17 CIVIL LIABILITY FOR FRAUDULENT OR OTHERWISE IMPROPER FINANCING STATEMENTS.

Subdivision 1. **Definitions.** For purposes of this section:

(1) "financing statement" has the meaning given in section 336.9-102(a) of the Uniform Commercial Code; and

(2) "filing officer" is defined as Uniform Commercial Code filing officer in each jurisdiction.

Subd. 2. **Liability.** (a) A person shall not knowingly cause to be presented for filing or promote the filing of a financing statement that the person knows:

(1) is forged;

(2) is not:

(i) related to a valid lien or security agreement; or

(ii) filed pursuant to section 336.9-502(d); and

(3) is for an improper purpose or purposes, such as to harass, hinder, defraud, or otherwise interfere with any person.

(b) A person who violates paragraph (a) is liable to each injured person for:

(1) the greater of:

(i) nominal damages up to \$10,000; or

(ii) the actual damages caused by the violation;

(2) court costs;

(3) reasonable attorney fees;

(4) related expenses of bringing the action, including investigative expenses; and

(5) exemplary damages in the amount determined by the court.

Subd. 3. **Cause of action.** (a) The following persons may bring an action to enjoin violation of this section or to recover damages under this section:

(1) the obligor, the person named as the debtor, any person who owns an interest in the collateral described or indicated in the financing statement, or any person harmed by the filing of the financing statement;

(2) the attorney general;

(3) a county attorney;

(4) a city attorney; and

(5) a person who has been damaged as a result of an action taken in reliance on the filed financing statement.

(b) A filing officer may refer a matter to the attorney general or other appropriate person for filing the legal actions under this section.

Subd. 4. **Venue.** An action under this section may be brought in any district court in the county in which the financing statement is presented for filing or in a county where any of the persons named in subdivision 3, paragraph (a), clause (1), resides.

Subd. 5. **Filing fee.** (a) The fee for filing an action under this chapter is \$..... The plaintiff must pay the fee to the clerk of the court in which the action is filed. Except as provided by paragraph (b), the plaintiff may not be assessed any other fee, cost, charge, or expense by the clerk of the court or other public official in connection with the action.

(b) The fee for service of notice of an action under this section charged to the plaintiff may not exceed:

- (1) \$..... if the notice is delivered in person; or
- (2) the cost of postage if the service is by registered or certified mail.

(c) A plaintiff who is unable to pay the filing fee and fee for service of notice may file with the court an affidavit of inability to pay under the Minnesota Rules of Civil Procedure.

(d) If the fee imposed under paragraph (a) is less than the filing fee the court imposes for filing other similar actions and the plaintiff prevails in the action, the court may order a defendant to pay to the court the differences between the fee paid under paragraph (a) and the filing fee the court imposes for filing other similar actions.

Subd. 6. **Other remedies.** (a) An obligor, person named as a debtor, owner of collateral, or any other person harmed by the filing of a financing statement in violation of subdivision 2, paragraph (a), also may request specific relief, including, but not limited to, terminating the financing statement and removing the debtor named in the financing statement from the index under the provisions of section 545.05, paragraph (c), such that it will not appear in a search under that debtor name.

(b) This law is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document.

History: 2006 c 260 art 7 s 12

604.18 INSURANCE STANDARD OF CONDUCT.

Subdivision 1. **Terms.** For purposes of this section, the following terms have the meanings given them.

(a) "Insurance policy" means a written agreement between an insured and an insurer that obligates an insurer to pay proceeds directly to an insured. Insurance policy does not include provisions of a written agreement obligating an insurer to defend an insured, reimburse an insured's defense expenses, provide for any other type of defense obligation, or provide indemnification for judgments or settlements. Insurance policy does not include:

- (1) coverage for workers' compensation insurance under chapter 176;
- (2) a written agreement of a health carrier, as defined in section 62A.011;
- (3) a contract issued by a nonprofit health service plan corporation regulated under chapter 62C that provides only dental coverage;
- (4) a written agreement authorized under section 60A.06, subdivision 1, clause (4) or (6), or 64B.16, subdivision 1; or
- (5) a written agreement issued pursuant to section 67A.191.

(b) "Insured" means a person who, or an entity which, qualifies as an insured under the terms of an insurance policy on which a claim for coverage is made. An insured does not include any person or entity claiming a third-party beneficiary status under an insurance policy.

(c) "Insurer" means every insurer, corporation, business trust, or association engaged in insurance as a principal licensed or authorized to transact insurance under section 60A.06, but for purposes of this section an insurer does not include a political subdivision providing self-insurance or a pool of political subdivisions under section 471.981, subdivision 3. The term does not include the Joint Underwriting Association operating under chapter 62F or 62I.

Subd. 2. **Liability.** (a) The court may award as taxable costs to an insured against an insurer amounts as provided in subdivision 3 if the insured can show:

- (1) the absence of a reasonable basis for denying the benefits of the insurance policy; and
- (2) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.

(b) A violation of this section shall not be the basis for any claim or award under chapter 325D or 325F.

(c) An insurer does not violate this subdivision by conducting or cooperating with a timely investigation into arson or fraud.

Subd. 3. **Damages and costs.** (a) In addition to prejudgment and postjudgment interest and costs and disbursements allowed under law, the court may award an insured the following taxable costs for a violation of subdivision 2:

- (1) an amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer at least ten days before the trial begins or \$250,000, whichever is less; and
- (2) reasonable attorney fees actually incurred to establish the insurer's violation of this section.

Attorney fees may be awarded only if the fees sought are separately accounted for by the insured's attorney and are not duplicative of the fees for the insured's attorney otherwise expended in pursuit of proceeds for the insured under the insurance policy. Attorney fees must not exceed \$100,000.

(b) An insured may not also recover punitive or exemplary damages or attorney fees under section 8.31 for a violation of this section.

Subd. 4. **Claim for taxable costs.** (a) Upon commencement of a civil action by an insured against an insurer, the complaint must not seek a recovery under this section. After filing the suit, a party may make a motion to amend the pleadings to claim recovery of taxable costs under this section. The motion must allege the applicable legal basis under this section for awarding taxable costs under this section, and must be accompanied by one or more affidavits showing the factual basis for the motion. The motion may be opposed by the submission of one or more affidavits showing there is no factual basis for the motion. At the hearing, if the court finds prima facie evidence in support of the motion, the court may grant the moving party permission to amend the pleadings to claim taxable costs under this section.

(b) An award of taxable costs under this section shall be determined by the court in a proceeding subsequent to any determination by a fact finder of the amount an insured is entitled

to under the insurance policy, and shall be governed by the procedures set forth in Minnesota General Rules of Practice, Rule 119.

(c) An award of taxable costs under this section is not available in any claim that is resolved or confirmed by arbitration or appraisal.

(d) The following are not admissible in any proceeding that seeks taxable costs under this section:

(1) findings or determinations made in arbitration proceedings conducted under section 65B.525 or rules adopted under that section;

(2) allegations involving, or results of, investigations, examinations, or administrative proceedings conducted by the Department of Commerce;

(3) administrative bulletins or other informal guidance published or disseminated by the Department of Commerce; and

(4) provisions under chapters 59A to 79A and rules adopted under those sections are not admissible as standards of conduct.

(e) A claim for taxable costs under this section may not be assigned. This paragraph does not affect the assignment of rights not established in this section.

Subd. 5. Insurance producers; liability limited. A licensed insurance producer is not liable under this section for errors, acts, or omissions attributed to the insurer that appointed the producer to transact business on its behalf, except to the extent the producer has caused or contributed to the error, act, or omission.

History: 2008 c 208 s 1

604.19 SUBVERSION OF EXAMINATION.

(a) A person engages in examination subversion practice when, with respect to a licensing or certifying examination, the person:

(1) removes from the examination room any examination materials without specific authorization;

(2) without authorization, discloses, publishes, transmits, or reconstructs by any means, including but not limited to memorization, any portion of the examination;

(3) pays or uses professional or paid examination takers for the purpose of reconstructing any portion of the examination;

(4) without authorization, obtains examination questions, answers, or materials, whether requested or not, either before, during, or after an examination;

(5) uses or purports to use any examination questions, answers, or materials that were improperly obtained from any examination for the purpose of instructing or preparing an applicant for examination;

(6) sells or offers to sell, distributes or offers to distribute, buys or offers to buy, or receives or possesses without authorization any portion of a future, current, or previously administered examination;

(7) communicates with any other person during the administration of an examination for the purpose of giving or receiving any unauthorized aid;

(8) copies answers from another examinee or permits the person's own answers to be copied by another examinee;

(9) possesses during the administration of the examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed and materials otherwise specifically authorized to be possessed during the examination;

(10) takes an examination using the identity of another person or has another person take an examination using a false identity;

(11) engages in any other conduct that violates the security of the examination materials;

(12) attempts to engage in any act listed in this paragraph; or

(13) aids or abets another person to engage in any act listed in this paragraph.

(b) Any person damaged or likely to be damaged by an examination subversion practice may seek injunctive relief in district court and recovery of damages caused by the practice.

(c) The remedies provided in this subdivision are in addition to any other remedy or penalty that may be available for the same conduct as permitted by law.

History: 2010 c 202 s 1

ACTION FOR SEXUAL EXPLOITATION; PSYCHOTHERAPISTS

604.20 DEFINITIONS.

Subdivision 1. **General.** The definitions in this section apply to sections 604.20 to 604.205.

Subd. 2. **Emotionally dependent.** "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to believe that the patient or former patient is unable to withhold consent to sexual contact by the psychotherapist.

Subd. 3. **Former patient.** "Former patient" means a person who was given psychotherapy within two years prior to sexual contact with the psychotherapist.

Subd. 4. **Patient.** "Patient" means a person who seeks or obtains psychotherapy.

Subd. 5. **Psychotherapist.** "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, licensed professional counselor, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Subd. 6. **Psychotherapy.** "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Subd. 7. **Sexual contact.** "Sexual contact" means any of the following, whether or not occurring with the consent of a patient or former patient:

(1) sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, into the genital or anal openings of the patient's or former patient's body by any part of the psychotherapist's body or by any object used by the psychotherapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the psychotherapist's body by any part of the patient's or former patient's body or by any object used by the patient or former patient for this purpose, if agreed to by the psychotherapist;

(2) kissing of, or the intentional touching by the psychotherapist of the patient's or former patient's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts;

(3) kissing of, or the intentional touching by the patient or former patient of the psychotherapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the psychotherapist agrees to the kissing or intentional touching.

"Sexual contact" includes requests by the psychotherapist for conduct described in clauses (1) to (3).

"Sexual contact" does not include conduct described in clause (1) or (2) that is a part of standard medical treatment of a patient.

Subd. 8. **Therapeutic deception.** "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

History: 1986 c 372 s 1; 1Sp1986 c 3 art 2 s 22; 1987 c 347 art 1 s 19; 2003 c 118 s 3

604.201 CAUSE OF ACTION FOR SEXUAL EXPLOITATION.

A cause of action against a psychotherapist for sexual exploitation exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred:

- (1) during the period the patient was receiving psychotherapy from the psychotherapist; or
- (2) after the period the patient received psychotherapy from the psychotherapist if (a) the former patient was emotionally dependent on the psychotherapist; or (b) the sexual contact occurred by means of therapeutic deception.

The patient or former patient may recover damages from a psychotherapist who is found liable for sexual exploitation. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

History: 1986 c 372 s 2

604.202 LIABILITY OF EMPLOYER.

(a) An employer of a psychotherapist may be liable under section 604.201 if:

(1) the employer fails or refuses to take reasonable action when the employer knows or has reason to know that the psychotherapist engaged in sexual contact with the plaintiff or any other patient or former patient of the psychotherapist; or

(2) the employer fails or refuses to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the psychotherapist as a psychotherapist within the last five years, concerning the occurrence of sexual contacts by the psychotherapist with patients or former patients of the psychotherapist.

(b) An employer or former employer of a psychotherapist may be liable under section 604.201 if the employer or former employer:

(1) knows of the occurrence of sexual contact by the psychotherapist with patients or former patients of the psychotherapist;

(2) receives a specific written request by another employer or prospective employer of the psychotherapist, engaged in the business of psychotherapy, concerning the existence or nature of the sexual contact; and

(3) fails or refuses to disclose the occurrence of the sexual contacts.

(c) An employer or former employer may be liable under section 604.201 only to the extent that the failure or refusal to take any action required by paragraph (a) or (b) was a proximate and actual cause of any damages sustained.

(d) No cause of action arises, nor may a licensing board in this state take disciplinary action, against a psychotherapist's employer or former employer who in good faith complies with this section.

History: 1986 c 372 s 3

604.203 SCOPE OF DISCOVERY.

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not subject to discovery except when the plaintiff claims damage to sexual functioning; or

(1) the defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

History: 1986 c 372 s 4

604.204 ADMISSION OF EVIDENCE.

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not admissible except when:

(1) the defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Violation of the terms of the order may be grounds for a new trial.

History: 1986 c 372 s 6

604.205 LIMITATION PERIOD.

An action for sexual exploitation shall be commenced within five years after the cause of action arises.

History: 1986 c 372 s 7