

## CHAPTER 544

## PLEADINGS

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**544.01** [Repealed, 1974 c 394 s 12]

**544.02** [Repealed, 1974 c 394 s 12]

**544.03** [Repealed, 1974 c 394 s 12]

**544.04** [Repealed, 1974 c 394 s 12]

**544.043 DEFAMATION BY TELEVISION AND RADIO; DEFENSE.**

The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, or any agent or employee of any such owner, licensee, or operator, is not liable for damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by any one other than such owner, licensee, or operator, or agent or employee thereof, if such owner, licensee, operator, or such agent or employee, shows an exercise of due care to prevent the publication or utterance of the statement in that broadcast. Provided, however, the exercise of due care shall be construed to include a bona fide compliance with any federal law or the regulation of any federal regulatory agency.

The provisions of this section shall not affect any action or proceeding now pending or which shall be commenced within six months after the passage thereof, in any of the courts of the state.

**History:** 1951 c 532 s 1; 1953 c 680 s 1,2; 1957 c 739 s 1; 1986 c 444

**544.05** [Repealed, 1974 c 394 s 12]

**544.06** [Repealed, 1974 c 394 s 12]

**544.07** [Repealed, 1974 c 394 s 12]

**544.08** [Repealed, 1974 c 394 s 12]

**544.09** [Repealed, 1974 c 394 s 12]

**544.10** [Repealed, 1974 c 394 s 12]

**544.11** [Repealed, 1974 c 394 s 12]

**544.12** [Repealed, 1974 c 394 s 12]

**544.13** [Repealed, 1974 c 394 s 12]

**544.14** [Repealed, 1974 c 394 s 12]

**544.15 SUBSCRIPTION AND VERIFICATION.**

Every pleading may be verified in the manner following:

(1) By the affidavit of the party, or of one or more of the parties pleading together, that the affiant knows the contents of the pleading, that the averments thereof are true of affiant's own knowledge, save as to such as are therein stated on information and belief, and that as to those the affiant believes them to be true;

(2) If the party be a corporation, the affidavit may be made by any officer thereof having knowledge of the facts sworn to; if the state, or any officer thereof acting in its behalf, by the attorney general;

(3) If no party or officer acquainted with the facts and capable of making such affidavit be within the county where the attorney resides, the pleading may be verified by the attorney or agent of the party, stating the fact of such absence and that the pleading is true to the best of the verifier's knowledge and belief.

**History:** (9265) *RL s 4142; 1974 c 394 s 8; 1986 c 444*

544.16 [Repealed, 1974 c 394 s 12]

544.17 [Repealed, 1974 c 394 s 12]

544.18 [Repealed, 1974 c 394 s 12]

544.19 [Repealed, 1974 c 394 s 12]

544.20 [Repealed, 1974 c 394 s 12]

#### 544.21 INCORPORATION, PLEADING AND PROOF.

In actions by or against a corporation, domestic or foreign, it shall be a sufficient averment of its incorporation to allege, in substance, that the party is a corporation duly organized and existing under the laws of the designated state, country, or place. Unless the adverse party shall specifically aver that the plaintiff or defendant is not a corporation, no proof thereof shall be required at the trial.

**History:** (9271) *RL s 4148*

#### 544.22 PARTNERSHIPS; PROOF AS TO MEMBERS.

When two or more persons sue or defend as copartners they may give in evidence any contract admissible under the pleadings. Unless the partnership is specifically denied by the adverse party, no proof shall be required that they are the same persons who composed such copartnership when the contract was made or at any subsequent time.

**History:** (9272) *RL s 4149*

544.23 [Repealed, 1974 c 394 s 12]

544.24 [Repealed, 1974 c 394 s 12]

544.25 [Repealed, 1974 c 394 s 12]

544.26 [Repealed, 1974 c 394 s 12]

544.27 [Repealed, 1974 c 394 s 12]

544.28 [Repealed, 1974 c 394 s 12]

544.29 [Repealed, 1974 c 394 s 12]

544.30 [Repealed, 1974 c 394 s 12]

544.31 [Repealed, 1974 c 394 s 12]

544.32 [Repealed, 1974 c 394 s 12]

544.33 [Repealed, 1974 c 394 s 12]

544.34 [Repealed, 1974 c 394 s 12]

544.35 [Repealed, 1974 c 394 s 12]

**544.36 AD DAMNUM; LIMITATION.**

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

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

**History:** 1978 c 738 s 3

**544.41 PRODUCT LIABILITY; LIMIT ON LIABILITY OF NONMANUFACTURERS.**

Subdivision 1. **Product liability; requirements.** In any product liability action based in whole or in part on strict liability in tort commenced or maintained against a defendant other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing injury, death or damage. The commencement of a product liability action based in whole or part on strict liability in tort against a certifying defendant shall toll the applicable statute of limitation relative to the defendant for purposes of asserting a strict liability in tort cause of action.

Subd. 2. **Certifying defendant; dismissal of strict liability.** Once the plaintiff has filed a complaint against a manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of a strict liability in tort claim against the certifying defendant, provided the certifying defendant is not within the categories set forth in subdivision 3. Due diligence shall be exercised by the certifying defendant in providing the plaintiff with the correct identity of the manufacturer and due diligence shall be exercised by the plaintiff in filing a law suit and obtaining jurisdiction over the manufacturer.

The plaintiff may at any time subsequent to dismissal move to vacate the order of dismissal and reinstate the certifying defendant, provided plaintiff can show one of the following:

- (a) that the applicable statute of limitation bars the assertion of a strict liability in tort cause of action against the manufacturer of the product allegedly causing the injury, death or damage;
- (b) that the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect. Once the correct identity of the manufacturer has been given by the certifying defendant the court shall again dismiss the certifying defendant;
- (c) that the manufacturer no longer exists, cannot be subject to the jurisdiction of the courts of this state, or, despite due diligence, the manufacturer is not amenable to service of process;
- (d) that the manufacturer is unable to satisfy any judgment as determined by the court; or
- (e) that the court determines that the manufacturer would be unable to satisfy a reasonable settlement or other agreement with plaintiff.

Subd. 3. **Dismissal order prohibited.** A court shall not enter a dismissal order relative to any certifying defendant even though full compliance with subdivision 1 has been made where the plaintiff can show one of the following:

- (a) that the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the injury, death or damage;
- (b) that the defendant had actual knowledge of the defect in the product which caused the injury, death or damage; or
- (c) that the defendant created the defect in the product which caused the injury, death or damage.

Subd. 4. **Limiting constructing laws.** Nothing contained in subdivisions 1 to 3 shall be construed to create a cause of action in strict liability in tort or based on other legal theory, or to affect the right of any person to seek and obtain indemnity or contribution.

**History:** 1980 c 614 s 156

#### **544.42 ACTIONS AGAINST PROFESSIONALS; CERTIFICATION OF EXPERT REVIEW.**

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

(1) "professional" means a licensed attorney or an architect, certified public accountant, engineer, land surveyor, or landscape architect licensed or certified under chapter 326 or 326A; and

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

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

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

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

Subd. 3. **Affidavit of expert review.** (a) The affidavit required by subdivision 2, clause (1), must be drafted by the party's attorney and state that:

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

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

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

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

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

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

commencement of the action against the defendant or within 180 days after service of the affidavit required by subdivision 3, paragraph (a), clause (2) or (3).

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

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

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

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

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

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

**History:** 1997 c 212 s 2; 2001 c 109 art 2 s 9