ADOPTED

The Committee on Model Civil Jury Instructions has amended numerous instructions designed to make uniform to the extent possible the jury instructions that discuss the burden of proof. In order to facilitate review of the amended instructions, the amended instructions have been temporarily grouped into several categories. The categories are General, Commercial, Products Liability/Malpractice/No-Fault, Other Tort, Probate, Landlord-Tenant, and Employment/Discrimination Instructions. The Committee has also deleted one outdated burden of proof instruction.

The text of these proposals can be found at https://www.michbar.org/journal/home/Volumeid=236 under the heading “Model Jury Instructions.”

The proposed amended instructions cover a large number of instructions. These include current instructions in Chapter 16 (general burden of proof), Chapter 25 (products liability), Chapter 30 (malpractice), Chapter 35 (first-party no-fault), Chapter 36 (third-party no-fault), Chapter 38 (agency), Chapter 75 (dramshop), Chapter 80 (dog bite), Chapters 100–101 (landlord-tenant), Chapter 105 (employment discrimination), Chapter 106 (Persons with Disabilities Civil Rights Act), Chapter 107 (Whistleblowers’ Protection Act), Chapter 108 (public accommodations and services), Chapter 110 (wrongful discharge), Chapter 112 (Franchise Investment Law), Chapter 113 (Consumer Protection Act), Chapter 114 (invasion of privacy), Chapter 115 (assault and battery), Chapter 116 (false arrest), Chapter 117 (malicious prosecution), Chapter 118 (libel and slander), Chapter 119 (intentional infliction of emotional distress), Chapter 125 (tortious interference with contract), Chapter 126 (tortious interference with business expectancy or relationship), Chapter 128 (fraud and misrepresentation), Chapter 130 (promissory estoppel), Chapter 140 (Uniform Commercial Code), Chapter 142 (contracts), Chapter 170 (will contests), Chapter 173 (bank accounts), Chapter 176 (claims for services rendered), and Chapter 179 (trust contests).

ADMITTED

The Committee has adopted the following new model civil jury instruction effective January 23, 2020.

ADMITTED

M Civ JI 97.43A
Legitimate Practice of Religious Beliefs

If you find that _____ [was/were] legitimately practicing [his/her/their] religious beliefs when [he/she/they] did not provide specified medical treatment for _____, [he/she/they] shall not, for that reason alone, be considered a negligent parent or guardian.

Note on Use

This instruction should be given if the instruction is requested by a respondent parent and if a rational view of the evidence supports the conclusion that the failure to provide medical treatment was based on the respondent’s legitimate practice of his or her religious beliefs. In re Piland, 503 Mich 1032 (2019).

Comment


History

Adopted January 2020.

M Civ JI 143.02
Principal—Defined

The term “principal” means a person that either: manufactures, produces, imports, sells, or distributes a product in this state; or contracts with a sales representative to solicit orders for or sell a product in this state.

Comment

MCL 600.2961(1)(d). “Person” is defined in MCL 600.2961(1)(b).

History

Adopted January 2020.

M Civ JI 143.03
Sales Representative—Defined

The term “sales representative” means a person who contracts with or is employed by a principal for the solicitation of orders or sale of goods and is paid, in whole or in part, by commission. Sales representative does not include a person who places an order or sale for a product on his or her own account for resale by that sales representative.

Comment

MCL 600.2961(1)(e). “Person” is defined in MCL 600.2961(1)(b).

History

Adopted January 2020.

M Civ JI 143.10
Payment of Commissions Due at the Time of Contract Termination

The term “commission” means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a percentage of the dollar amount of profits.

Comment

MCL 600.2961(1)(a).

History

Adopted January 2020.
From the Committee on Model Civil Jury Instructions

History
Adopted January 2020.

M Civ JI 143.11
Payment of Commissions That Become Due After Contract Termination

The Sales Representatives’ Commissions Act requires commissions that become due after the contract termination date to be paid within 45 days after the date on which the commission became due.

Comment
MCL 600.2961(4).

History
Adopted January 2020.

M Civ JI 143.12
When Commissions Become Due

The terms of the contract between the principal and sales representative determines when a commission becomes due.

If the time when the commission is due cannot be determined by a contract between the principal and sales representative, the past practices between the parties shall control or, if there are no past practices, the custom and usage prevalent in this state for the business that is the subject of the relationship between the parties.

Comment
MCL 600.2961(2) and (3).

History
Adopted January 2020.

M Civ JI 143.20
Failure to Pay Commissions Due at Time of Termination

Your verdict will be for [sales representative] if you find by a preponderance of the evidence that: (1) commissions were due at the time of termination of the contract between [sales representative] and [principal] and (2) [principal] failed to pay those commissions after the date of termination. Otherwise, your verdict will be for [principal].

Comment
MCL 600.2961(4).

History
Adopted January 2020.

M Civ JI 143.21
Failure to Pay Commissions Due After Termination

Your verdict will be for [sales representative] if you find by a preponderance of the evidence that: (1) commissions became due after the termination of the contract between [sales representative] and [principal] and (2) [principal] failed to pay those commissions. Otherwise, your verdict will be for [principal].

Comment
MCL 600.2961(4).

History
Adopted January 2020.

M Civ JI 143.22
Actual Damages/Intentional Failure to Pay Commissions When Due

If your verdict is for [sales representative], then you shall award [sales representative] the actual damages caused by the failure to pay the commissions when due.

In addition, you must determine whether [principal] intentionally failed to pay the commissions when due. If you find by a preponderance of the evidence that [principal] intentionally failed to pay the commissions when due, then you shall award [sales representative] an amount in addition to actual damages. That additional amount shall be the lesser of: (1) two times the amount of commissions due but not paid as required; or (2) $100,000.00.

Comment
MCL 600.2961(5).

History
Adopted January 2020.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee’s function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee’s responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Mark T. Boonstra
Reporter: Timothy J. Raubinger
Members: Benjamin J. Aloia; Matthew Aneese; Robert L. Avers; Hilary A. Ballentine; Hon. Annette Jurkiewicz-Berry; Hon. Kathleen A. Feeney; William B. Forrest III; Hon. Michael F. Gadola; Donald J. Gasiorek; James F. Hewson; Hon. Michael L. Jacobette; Amy M. Johnston; Hon. Amy Ronayne Krause; Hon. Charles T. LaSata; C. Thomas Ludden; Daniel J. Schulte; Judith A. Susskind; Emily Thomas; Thomas Van Dusen; Thomas W. Waun.