

No. 294, A.]

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CHAPTER 113

AN ACT to repeal 326.07, 326.09 (1) (b), 326.13, 326.14, 326.15 and 326.16; to renumber 326.09 (1) (c) and (d); to amend 326.09 (1) (a) and 326.10; and to repeal and recreate 326.12 of the statutes, relating to depositions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 326.07 of the statutes is repealed.

SECTION 2. 326.09 (1) (a) of the statutes is amended to read:

326.09 (1) (a) Such deposition, in this state, may be taken by a justice of the peace, notary public, court commissioner or other person authorized to take depositions, *except as provided in s. 326.12 (3)*, at any time after the action or proceeding is commenced or after a submission to arbitration.

SECTION 3. 326.09 (1) (b) of the statutes is repealed.

SECTION 4. 326.09 (1) (c) and (d) of the statutes are renumbered 326.09 (1) (b) and (c), respectively.

SECTION 5. 326.10 of the statutes is amended to read:

326.10 The deponent shall be sworn to testify the truth, the whole truth and nothing but the truth relating to the action, proceeding or matter

for which his testimony is taken, and his testimony shall be taken in writing, or in shorthand by a stenographer approved by the officer taking the same, or by all parties in interest, and by *or under the supervision of such stenographer typewritten or reduced to longhand*. There must be inserted therein every answer or declaration of the witness and every oral interrogatory which any party requires to be inserted. The deposition must be read to or by the witness and subscribed by him, unless the parties represented shall stipulate, upon the record (which they may do), that the reading of the deposition to or by the deponent and his signature thereto are waived, and that the deposition may be used with like force and effect as if read and subscribed by him. The attendance of the deponent for the purpose of reading and subscribing his deposition may be compelled in the same manner that his attendance to be examined may be compelled. The deposition shall in all cases be delivered or transmitted by the officer by whom the same is taken to the clerk of the court, the magistrate, board or officer before whom the action, proceeding or matter is pending, securely sealed, and shall remain sealed until opened by such court, clerk, magistrate, board or officer.

SECTION 6. 326.12 of the statutes is repealed and recreated to read:

326.12 DEPOSITIONS; PURPOSE, PROCEDURE, SCOPE, USE, EFFECT AND RELATED MATTERS. (1) **WHEN DEPOSITIONS MAY BE TAKEN.** In any civil action or proceeding, any party may examine any person, including a party, by deposition upon oral examination at any time before final determination thereof, for the purposes of discovery or for use as evidence in the action or for both purposes.

(2) **SCOPE OF EXAMINATION.** A deponent shall be examined regarding any matter, not privileged, which is relevant to the controversy, but it shall not be grounds for objection that testimony will be inadmissible at trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) **ORDERS FOR THE PROTECTION OF DEONENTS.** After notice is served for taking a deposition, upon motion reasonably made by any party or by the person to be examined, and, upon notice and for good cause shown, the court may make an order that the deposition shall not be taken, or that certain matters shall not be inquired into, or any other order which justice requires to protect the party or witness from annoyance, embarrassment or oppression.

(4) **TIME, PLACE, NOTICE; OFFICERS EMPOWERED TO TAKE.** Such examinations shall be taken in counties within this state having a population of 500,000 or more before a court commissioner or judge at chambers and elsewhere before any officer authorized to take depositions by the laws of the state where the deposition is taken on previous notice to all adverse parties or their respective attorneys of at least 5 days. If the person to be examined is a nonresident party to the action or proceeding, or is an officer, director, or managing agent of a corporation that is a party, the court may upon just terms fix the time and place of such examination, and he shall attend at such time and place and submit to the examination, and, if required, attend for the reading and signing of such deposition, without service of subpoenas. Such examination shall not be compelled in any county other than that in which the person examined resides, except that any nonresident subject to examination may be examined in any county of this state in which he is personally served with notice and subpoena. The court may fix another place for such an examination in the case of a person who is physically unable to attend the examination in the county of his residence. When a party has instituted suit in any county of this state, he shall be subject to adverse examination in such county whether he resides in such county or not provided a subpoena is served upon him within such county.

(5) EFFECT OF IRREGULARITIES AS TO TAKING OF DEPOSITIONS. (a) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(b) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(6) DISCOVERY NEEDED TO PLEAD. If discovery is sought of an adverse party to enable the plaintiff to frame a complaint, the notice of taking the examination shall be accompanied by the affidavit of himself, his attorney or agent, stating the general nature and object of the action or proceeding; that discovery is sought to enable him to plead, and the subjects upon which information is desired; and the examination relative thereto shall be permitted unless the court or presiding judge thereof shall, before the examination is begun, further limit the subjects to which it shall extend, which may be done on one day's notice.

(7) USE OF DEPOSITIONS. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(b) The deposition of a party or of any one who at the time of taking the deposition, or at the time of the occurrence of the facts made the subject of the examination, was an officer, director, agent or employe of a public or private corporation, partnership, or association which is a party, may be used by an adverse party for any purpose, subject to the limitations prescribed in s. 325.27, relating to admissions by members of corporations.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

1. That the witness lives more than 30 miles from the place of trial or hearing of the action, proceeding or matter in which his testimony is desired or beyond the reach of the subpoena of the court;

2. That the witness is out of the state and will not return before the termination of the trial or hearing;

3. That the witness is dead or is so sick, infirmed or aged as to make it probable that he will not be able to attend at the trial or hearing of the action, proceeding or matter in which his tesimony is desired;

4. That the witness is a member of the legislature, if any committee of the same or the house of which he is a member is in session, provided he waive his privilege;

5. That his testimony is material to any motion or other similar proceeding in any court of record and he refuses to make affidavit of the facts within his knowledge and with reference thereto; or

6. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow some portion or all of the deposition to be used.

(8) **INTRODUCING ADDITIONAL PARTS.** If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may thereupon introduce any other parts of said deposition relevant to the parts introduced.

(9) **EXAMINATION AND CROSS-EXAMINATION.** Examination and cross-examination of deponents shall proceed as permitted at the trial.

(10) **EFFECT OF TAKING OR USING DEPOSITIONS.** A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition, or any part thereof, for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party so introducing the deposition, but this shall not apply to the introduction in evidence by a party of a deposition taken of the adverse party. At the trial or hearing any party may rebut any relevant evidence contained in the deposition whether introduced by him or by any other party.

SECTION 7. 326.13, 326.14, 326.15 and 326.16 of the statutes are repealed.

Approved June 7, 1961.
