

JUDICIAL PROCEDURE, CIVIL

CHAPTER 231

HOUSE BILL NO. 1456

(Representatives Hogan, DeKrey, Delmore, Holman)
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 28-01 of the North Dakota Century Code, relating to the statute of limitations on civil actions involving childhood sexual abuse.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-01 of the North Dakota Century Code is created and enacted as follows:

Limitation on actions alleging childhood sexual abuse.

Notwithstanding section 28-01-25, a claim for relief resulting from childhood sexual abuse must be commenced within seven years after the plaintiff knew or reasonably should have known that a potential claim exists resulting from alleged childhood sexual abuse. For purposes of this section, "childhood sexual abuse" means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under eighteen years of age and which would have been a violation of chapter 12.1-20 or 12.1-27.2.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 232

HOUSE BILL NO. 1388

(Representatives Klemin, Kretschmar)
(Senators Olafson, Nelson)

AN ACT to amend and reenact section 28-05-07 of the North Dakota Century Code, relating to filing of a notice of lis pendens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-05-07 of the North Dakota Century Code is amended and reenacted as follows:

28-05-07. Lis pendens - Effect.

In a civil or criminal action in a ~~district~~ court affecting the title to real property, the plaintiff, at the time of filing the complaint or criminal information or indictment or at any time afterwards, or the defendant, when the defendant sets up in the defendant's answer an affirmative claim for relief affecting the title to real property and demands substantive relief, at the time of filing the defendant's answer or at any time afterwards, may file for record with the recorder of each county in which the real property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property affected. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded is deemed a subsequent purchaser or encumbrancer with notice and is bound by all proceedings taken after the filing of such notice to the same extent as if that person were a party to the action. For the purpose of this section, an action is deemed to be pending from the time of filing such notice, but ~~such~~the notice in a civil action is of no avail unless it is followed by the first publication of the summons, or by the personal service thereof on a defendant, within sixty days after such filing.

Approved March 29, 2011
Filed March 29, 2011

CHAPTER 233

HOUSE BILL NO. 1026

(Legislative Management)
(Administrative Rules Committee)

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to authority of administrative agencies to adopt an organizational rule.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is amended and reenacted as follows:

28-32-02. Rulemaking power of agency - Organizational rule.

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.
2. In addition to other rulemaking requirements imposed by law, each agency ~~shall~~may include in its rules a description of that portion of its organization and functions subject to this chapter, ~~stating and may include a statement of~~ the general course and method of its operations and how the public may obtain information or make submissions or requests.

Approved March 28, 2011

Filed March 28, 2011

CHAPTER 234

HOUSE BILL NO. 1162

(Representative Keiser)
(Senator Klein)

AN ACT to create and enact section 28-32-08.2 of the North Dakota Century Code, relating to fiscal notes for agency rules; to amend and reenact subsection 5 of section 28-32-03, subsection 1 of section 28-32-10, and subsection 2 of section 28-32-18 of the North Dakota Century Code, relating to notice of emergency rulemaking and the administrative rules committee carrying over consideration of administrative rules; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

5. The agency shall ~~take appropriate measures~~attempt to make interim final rules known to ~~every person~~persons who the agency can reasonably be expected to believe may be affected by have a substantial interest in them. As used in this subsection, "substantial interest" means an interest in the effect of the rules which surpasses the common interest of all citizens. An agency adopting emergency rules shall comply with the notice requirements of section 28-32-10 which relate to emergency rules and shall provide notice to the chairman of the administrative rules committee of the emergency status, declared effective date, and grounds for emergency status of the rules under subsection 2. When notice of emergency rule adoption is received, the legislative council shall publish the notice and emergency rules on its website.

SECTION 2. Section 28-32-08.2 of the North Dakota Century Code is created and enacted as follows:

28-32-08.2. Fiscal notes for administrative rules.

When an agency presents rules for administrative rules committee consideration, the agency shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules changes on state revenues and expenditures, including any effect on funds controlled by the agency.

SECTION 3. AMENDMENT. Subsection 1 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed

rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the legislative council must be accompanied by a copy of the proposed rules.

- b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, identification of the emergency status and declared effective date of any emergency rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.

SECTION 4. AMENDMENT. Subsection 2 of section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency appears before the administrative rules committee when rules are scheduled for committee consideration, those rules are held over for consideration at the next subsequent committee meeting. Rules are not considered initially considered by the committee under this subsection until a representative of the agency appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency appears before the administrative rules committee meeting to which rules are held over for consideration, the rules are void if the rules were adopted as emergency rules and for rules not adopted as emergency rules the administrative rules committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting. Within three business days after the administrative rules committee finds that a rule is void, the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative management for review by the legislative management of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.

SECTION 5. EFFECTIVE DATE. Sections 1 and 3 of this Act are effective for rules for which the notice of rulemaking is filed with the legislative council after

July 31, 2011. Sections 2 and 4 of this Act are effective for rules scheduled for administrative rules committee review after July 31, 2011.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 235

HOUSE BILL NO. 1087

(Judiciary Committee)

(At the request of the Office of Administrative Hearings)

AN ACT to amend and reenact subsections 1 and 2 of section 28-32-40 of the North Dakota Century Code, relating to the time for filing a petition for reconsideration from a final order of an administrative agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 28-32-40 of the North Dakota Century Code are amended and reenacted as follows:

1. Any party before an administrative agency who is aggrieved by the final order of the agency, including the administrative agency when the hearing officer is not the agency head or one or more members of the agency head, within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review. If the agency's hearing officer issues the agency's final order, the petition for reconsideration must be addressed to the hearing officer, who may grant or deny the petition under subsection 4.
2. Any party ~~appearing, including workforce safety and insurance, that appears~~ before workforce safety and insurance may have file a petition for reconsideration within thirty days within which to file a petition for reconsideration after notice has been given as required by section 28-32-39.

Approved May 9, 2011

Filed May 10, 2011