

JUDICIAL REMEDIES

CHAPTER 303

SENATE BILL NO. 2280

(Senators Wanzek, Fischer, Nichols)
(Representatives Berg, Nicholas, B. Thoreson)

CROP, LIVESTOCK, AND COMMODITY DAMAGE AWARDS

AN ACT relating to awards for the damage and destruction of crops, livestock, or commodities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Damage or destruction of crops, livestock, or commodities - Damages.

1. A person is liable for damages as provided in subsection 2 if that person willfully and knowingly damages or destroys any crop, livestock, or commodity which is being produced, or has been produced for:
 - a. Personal or commercial purposes; or
 - b. Testing or research purposes as part of a product development program in conjunction with or in coordination with a private research facility, a university, or any federal, state, or local government entity.
2. In awarding damages under subsection 1, a court shall consider the market value of the crop, livestock, or commodity before the damage or destruction and the production, research, testing, replacement, and development costs directly related to the crop, livestock, or the commodity. A person found by the court to have been damaged under this section may recover reasonable attorneys' fees, exemplary damages, and twice the market value of the crop, livestock, or commodity before the damage or destruction and twice the actual production, research, testing, replacement, and development costs. Damages to crops, livestock, or commodities under this section which are reasonably necessary under a written contract or recorded easement duly entered into by the crop, livestock, or commodity producer are not recoverable.
3. This section does not preclude or limit any other right or remedy available under law or equity.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 304

SENATE BILL NO. 2340

(Senators Traynor, Christmann, Cook, Stenehjem)
(Representatives Porter, Weiler)

FIREARM LIMITED LIABILITY

AN ACT to limit the liability resulting from the manufacture, distribution, and sale of firearms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Limited liability - Firearms.

1. In this section, a firearm is defined as in section 62.1-01-01.
2. A firearm manufacturer, distributor, or seller who lawfully manufactures, distributes, or sells a firearm is not liable to any person or to the estate, a successor, or survivor of any person for any injury suffered, including wrongful death and property damage, because of the use of a firearm by another.
3. An association of persons who are licensed under section 923 of title 18 of the United States Code, or amendments thereto, is not liable to any person or to the estate, a successor, or survivor of any person for any injury suffered, including wrongful death and property damage, because of the use of a firearm sold or manufactured by any licensee who is a member of the association.
4. This section does not apply to a claim for relief for deceit, breach of contract, express or implied warranty, or for injury resulting from failure of a firearm to operate in a normal or usual manner due to defects or negligence in design or manufacture. This section does not apply to a claim for relief arising from the unlawful sale or transfer of a firearm or an instance when the transferor knew or should have known that the recipient would engage in the unlawful sale or transfer of the firearm or would use or purposely allow the use of the firearm in an unlawful, negligent, or improper fashion. For the purposes of this subsection, the potential of a firearm to cause serious injury, damage, or death as a result of normal function does not constitute a defective condition of the product. A firearm may not be deemed defective on the basis of its potential to cause serious injury, damage, or death when discharged.

Approved March 22, 2001
Filed March 22, 2001

CHAPTER 305

SENATE BILL NO. 2123

(Judiciary Committee)

(At the request of the State Department of Health)

EMERGENCY MEDICAL AID LIABILITY

AN ACT to amend and reenact section 32-03.1-05 of the North Dakota Century Code, relating to liability for providing emergency medical aid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

32-03.1-05. Exceptions. This chapter ~~shall~~ does not encompass ~~any a~~ person who, at the time of the emergency, was employed expressly or actually for the purpose of providing emergency medical aid to humans, either within or outside of a hospital or other place or vehicle with medical equipment, for emergency medical aid or other assistance rendered in the regular course of their employment. Such persons and their employers ~~shall be~~ are liable for their acts and omissions in rendering emergency medical aid in the regular course of their employment, according to the prevailing law in this state ~~in existence on July 1, 1987.~~

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 306

HOUSE BILL NO. 1342

(Representative Keiser)

GARNISHMENT DISCLOSURE FORMS

AN ACT to amend and reenact sections 32-09.1-09, 32-09.1-14, 32-09.1-19, and 32-09.1-21 of the North Dakota Century Code, relating to garnishment disclosure forms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-09. Disclosure. Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by some officer, manager, or agent having knowledge of the facts. Disclosure must state:

1. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.
2. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.
3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
4. Whether the defendant claims any exemption from execution or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

State of North Dakota)		In _____ Court
)	ss.	
County of _____)		_____
_____ Plaintiff			
vs.			
_____ Defendant			
and			Garnishment Disclosure
_____ Garnishee			

I am the _____ of the garnishee and duly authorized to disclose for the garnishee.

On _____, _____, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purposes of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.
 - a. Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant's pay periods which may be subject to garnishment.

 - b. Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods which may be subject to garnishment. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks must be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

- c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a. If the amount is zero, skip lines d through g and enter zero on line h.
-
- d. Enter on the line below 25 percent of line a.
-
- e. Enter on the line below the lesser of line c and line d.
-
- f. Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten days after receipt of the garnishee summons).
-
- g. Enter on the line below an amount equal to the number of dependents (line f) times twenty dollars times the number of workweeks used to compute line b.
-
- h. Enter on the line below the difference (never less than zero) when line g is subtracted from line e.
-
2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.
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3. Property. Describe on the line below any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee.
-
4. Setoff. ~~Enter~~ If the amount set forth on lines 1(h), 2, and 3 is zero, skip lines 5 through 8 and go to line 9. If the amount set forth on lines 1(h), 2, and 3 is more than zero, enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines 1(h), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
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5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State each person's name and address and the nature of that person's claim, if known. (Any assignment of wages made by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
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6. Enter on the line below the total of lines 4 and 5.
-
7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of lines 1(h), 2, and 3.
-
8. Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.
-
9. ~~Enter~~ If the amount set forth on lines 1(h), 2, and 3 is zero, enter zero on the line below. If the amount set forth on lines 1(h), 2, and 3 is more than zero, enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$10.00 or more.
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10. If this form was completed for the plaintiff for the immediately preceding pay period and the amount on line 9 was less than \$10.00, the answers to disclosure for the immediately preceding pay period remain in effect and the garnishee is not required to answer the questions in the garnishment disclosure for subsequent pay periods until the amount on line 9 is \$10.00 or more.

Signature _____
Authorized Representative
of Garnishee

Title

Subscribed and sworn to before me on _____, _____.

Notary Public

SECTION 2. AMENDMENT. Section 32-09.1-14 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-14. Default. If any garnishee who is duly summoned willfully fails to serve disclosure as required in this chapter, the court ~~may~~, upon proof by affidavit, may render judgment against the garnishee for an amount not exceeding the plaintiff's judgment against the defendant or one hundred ten percent of the amount which remains unpaid, whichever is the smaller, but the court upon good cause

shown may remove the default and permit the garnishee to disclose on terms as may be just.

SECTION 3. AMENDMENT. Section 32-09.1-19 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-19. Garnishments - Minimal amount - Disclosure. If the amount required to be retained by the garnishee is less than ten dollars, the garnishee ~~shall~~ may not retain the sum but shall make the disclosures otherwise required, except as provided in section 32-09.1-21.

SECTION 4. AMENDMENT. Section 32-09.1-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-21. Continuing lien on wages. A plaintiff may obtain a one hundred eighty-day continuing lien on wages by garnishment. A plaintiff obtaining a continuing lien on wages by garnishment shall mark "continuing lien" on the caption of the garnishee summons. Each garnishment disclosure form must provide the garnishee will continue to hold the nonexempt portion of the defendant's earnings as the earnings accrue through the last payroll period ending on or before one hundred eighty days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

If the garnishee's answers to a garnishment disclosure form provide the amount withheld is less than ten dollars, the garnishee is not required to return subsequent forms to the plaintiff until the amount withheld is ten dollars or more. For any pay period in which the garnishee is not required under this section to return the form to the plaintiff, the garnishee's answers from the previous form remain in effect. At the expected termination of the lien, the plaintiff shall mail the garnishee an additional copy of the garnishment disclosure form upon which the garnishee within ten days shall make further disclosure.

Approved March 27, 2001
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