

JUDICIAL REMEDIES

CHAPTER 295

HOUSE BILL NO. 1226

(Representatives Damschen, Bellew, Porter)

DEFIBRILLATOR ACQUISITION NOTICE

AN ACT to amend and reenact section 32-03.1-02.3 of the North Dakota Century Code, relating to notification to the state department of health of acquisition of an automated external defibrillator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

32-03.1-02.3. Automated external defibrillators - Requirements.

1. Except for a medical services facility or prehospital emergency medical services provider, every person who acquires an automated external defibrillator shall:
 - a. ~~Notify the department of health, upon acquisition of an automated external defibrillator, of the location of and the type of automated external defibrillator.~~
 - b. Require every individual expected to use the automated external defibrillator to receive American heart association or American red cross training in cardiopulmonary resuscitation and automated external defibrillator use or an equivalent nationally recognized course in cardiopulmonary resuscitation and automated external defibrillator use.
 - c. ~~Maintain and test the automated external defibrillator according to the manufacturer's operational guidelines.~~
 - d. ~~Establish an automated external defibrillator use protocol that provides any person who provides emergency care or treatment to an individual in cardiac arrest by using the automated external defibrillator shall contact as soon as possible an appropriate health care provider or emergency medical services provider.~~
 - e. ~~Consider recommendations of a licensed physician in establishing the training, notification, and maintenance requirements of this subsection.~~
2. Any person who in good faith and without compensation provides emergency care or emergency treatment by using an automated external defibrillator is immune from civil liability for any personal injury

resulting from the emergency care or emergency treatment and for any act or failure to act in providing or arranging further medical treatment if the person providing the emergency care or emergency treatment acted as an ordinary, reasonable, prudent person would act under the same or similar circumstances. This subsection does not apply if a personal injury results from the gross negligence or from the willful or wanton misconduct of the person providing the emergency care or emergency treatment.

3. If the requirements of subsection 1 are met, the immunity provision of subsection 2 applies to a licensed physician under subdivision ~~e~~ d of subsection 1, the person who provides the training under subdivision ~~b~~ a of subsection 1, and the person responsible for the site on which the automated external defibrillator is located.
4. This section does not limit civil liability protection provided by any other law.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 296**SENATE BILL NO. 2162**

(Senators Wardner, Trenbeath)
(Representatives Herbel, Kretschmar)

GARNISHMENT RENEWAL NOTICES

AN ACT to amend and reenact section 32-09.1-04 of the North Dakota Century Code, relating to notice of renewal of garnishment of earnings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-04. Notice before garnishment of earnings - Notice of renewal of garnishment of earnings.

1. At least ten days before the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

To: _____ Date: _____

Judgment Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer, without any further court proceedings or notice to you, at any time after ten days following the date of this notice. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$_____.

Judgment Creditor
Address

2. As an alternative to subsection 1, if a creditor renews an expiring continuing lien on wages under section 32-09.1-21, at least ten days but no more than twenty days before the expiration of the continuing lien on wages, the creditor may serve upon the debtor a notice that a garnishee summons may be reissued for a continuing lien on wages under section 32-09.1-21. The notice must be served personally or by first-class mail.

Failure to serve the notice renders any subsequent garnishment void.
The notice must be in substantially the following form:

To: _____ Date: _____

Judgment Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer without any further court proceedings or notice to you. This action is a renewal of the current garnishment order for this case. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$ _____ :

Judgment Creditor
Address

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 297

HOUSE BILL NO. 1511

(Representatives Weiler, Headland, Thoreson)
(Senators Brown, Dever, Kilzer)

GARNISHMENT FEES AND JUDGMENTS

AN ACT to amend and reenact sections 32-09.1-05, 32-09.1-10, and 32-09.1-14 of the North Dakota Century Code, relating to garnishment disclosure fees and default judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-05. Service on office of management and budget - Fees. Service upon the state of North Dakota, or any state institution, department, or agency ~~thereof~~, as garnishee, may be made upon the director of the office of management and budget in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the office of management and budget for making and filing an affidavit of disclosure in the amount of ~~ten~~ twenty-five dollars. The fee ~~shall must~~ be paid into deposited in the state treasury.

SECTION 2. AMENDMENT. Section 32-09.1-10 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-10. Disclosure fees. In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of ~~ten~~ twenty-five dollars as the fee for making an affidavit of disclosure.

SECTION 3. 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, upon proof by affidavit of the creditor, 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~~. The creditor shall serve the garnishee with a copy of the affidavit and a notice of intent to take default judgment. The court upon good cause shown may remove the default and permit the garnishee to disclose on terms as may be just.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 298

SENATE BILL NO. 2378

(Senators Dever, Lyson, Syverson)
(Representatives Dosch, L. Meier, Weiler)

GARNISHMENT DISCLOSURE FORM

AN ACT to amend and reenact section 32-09.1-09 of the North Dakota Century Code, relating to the garnishment disclosure form.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-09 of 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.

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- 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.
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- 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).
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-
- 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. 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.
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-

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.
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9. 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.

2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that person's claim if known. (Any assignment of wages made by the defendant or any indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)

3. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed within ten days after receipt of the garnishee summons.)

4. Worksheet:

a. Total earnings in pay period _____

- b. Federal tax _____
- c. State tax _____
- d. FICA (social security/medicare) _____
- e. Total deductions (lines b+c+d) _____
- f. Disposable earnings (line a less line e) _____
- g. Twenty-five percent of line f _____
- h. Minimum wage exemption
(minimum wage times forty hours times
number of weeks in pay period) _____
- i. Line f less line h _____
- j. Line g or line i (whichever is less) _____
- k. Dependent exemption (twenty dollars
per dependent per week, if claimed) _____
- l. Adverse interest or setoff _____
- m. Total of lines k and l _____
- n. Line j less line m _____

Line n is the amount subject to garnishment (not to exceed 110 percent of the amount of the judgment which remains unpaid).

Signature _____
Garnishee or Authorized Representative
of Garnishee

Title

Subscribed and sworn to before me on _____, _____.

Notary Public

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 299

SENATE BILL NO. 2265

(Senators Trenbeath, Espegard, Grindberg)
(Representatives Delmore, Klemin, Kretschmar)

STATE AND POLITICAL SUBDIVISION CIVIL LIABILITY

AN ACT to amend and reenact sections 32-12.1-02, 32-12.1-03, and 32-12.2-02 of the North Dakota Century Code, relating to civil liability of political subdivisions and the state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

32-12.1-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim permitted by this chapter brought against a political subdivision for an injury caused by a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office.
2. "Commissioner" means the insurance commissioner.
3. "Employee" means any officer, employee, board member, volunteer, or servant of a political subdivision, whether elected or appointed and whether or not compensated. The term does not include an independent contractor, or any person performing tasks the details of which the political subdivision has no right to control.
4. "Injury" means personal injury, death, or property damage. ~~Personal injury includes sickness or disease sustained by any person caused by a political subdivision or an employee thereof. Property damage includes injury to or destruction of tangible property caused by a political subdivision or an employee thereof.~~
5. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person, and injury to a person's rights or reputation.
6. "Political subdivision":
 - a. Includes all counties, townships, park districts, school districts, cities, public nonprofit corporations, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.

- b. Does not include nor may it be construed to mean either the state of North Dakota or any of the several agencies, boards, bureaus, commissions, councils, courts, departments, institutions, or offices of government which collectively constitute the government of the state of North Dakota.
- 6- 7. "Property damage" includes injury to or destruction of tangible or intangible property.
8. "Public nonprofit corporation" means a nonprofit corporation that performs a governmental function and is funded, entirely or partly, by the state, a city, county, park district, school district, or township.

SECTION 2. AMENDMENT. Section 32-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

32-12.1-03. Liability of political subdivisions - Limitations.

1. Each political subdivision is liable for money damages for injuries when the injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment or office under circumstances where the employee would be personally liable to a claimant in accordance with the laws of this state, or injury caused from some condition or use of tangible property, real or personal, under circumstances where the political subdivision, if a private person, would be liable to the claimant. The enactment of a law, rule, regulation, or ordinance to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the political subdivision, its employees, or its agents, if that duty would not otherwise exist.
2. The liability of political subdivisions under this chapter is limited to a total of two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.
3. ~~A political subdivision is not liable for any claim based upon an act or omission of a political subdivision employee exercising due care in the execution of a valid or invalid statute or regulation or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved is abused. Specifically, a political subdivision or a political subdivision employee is not liable for any claim that results from or a political subdivision employee may not be held liable under this chapter for any of the following claims:~~
 - a. A claim based upon an act or omission of a political subdivision employee exercising due care in the execution of a valid or invalid statute or regulation.

- b. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
- ~~b.~~ c. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- ~~e.~~ d. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
- ~~d.~~ The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this subdivision does not provide immunity for damages resulting from acts of gross negligence.
- e. Injury directly or indirectly caused by a person who is not employed by the political subdivision.
- f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:

 - (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.
 - (2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.
 - (3) Providing or failing to provide law enforcement services in the ordinary course of a political subdivision's law enforcement operations.
 - (4) Providing or failing to provide fire protection services in the ordinary course of a political subdivision's fire protection operations.
- g. "Public duty" does not include action of the political subdivision or a political subdivision employee under circumstances in which a special relationship can be established between the political subdivision and the injured party. A special relationship is demonstrated if all of the following elements exist:

 - (1) Direct contact between the political subdivision and the injured party.

Subject to this chapter, any payments to persons constitute payment in full of any compromised claim or judgment or any final judgment under this chapter.

5. Notwithstanding this chapter, a political subdivision or its insurance carrier is not liable for any claim arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.
6. A political subdivision is not liable for any claim based on an act or omission in the designation, repair, operation, or maintenance of a minimum maintenance road if that designation has been made in accordance with sections 24-07-35 through 24-07-37 and if the road has been maintained at a level to serve occasional and intermittent traffic.

SECTION 3. AMENDMENT. Section 32-12.2-02 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-02. Liability of the state - Limitations - Statute of limitations.

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly. The enactment of a law, rule, or regulation to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.
2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the one million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered.
3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:
 - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.

- b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.
- c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
- d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- e. A claim relating to injury directly or indirectly caused by a person who is not employed by the state.
- f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:
 - (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.
 - (2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.
 - (3) Providing or failing to provide law enforcement services in the ordinary course of a state's law enforcement operations.
- g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:
 - (1) Direct contact between the state and the injured party.
 - (2) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who allegedly was injured.
 - (3) Knowledge on the part of the state that inaction of the state could lead to harm.
 - (4) The injured party's justifiable reliance on the state's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the state, or the state action increases the risk of harm.

- ~~h.~~ h. A claim resulting from the assessment and collection of taxes.
- ~~f.~~ i. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
- ~~g.~~ j. A claim resulting from any injury caused by a wild animal in its natural state.
- ~~h.~~ k. A claim resulting from the condition of unimproved real property owned or leased by the state.
- ~~i.~~ l. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
- ~~j.~~ m. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
- ~~k.~~ n. A claim resulting from damage to the property of a patient or inmate of a state institution.
- ~~l.~~ o. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.
- ~~m.~~ p. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- ~~n.~~ q. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- ~~o.~~ r. A claim for damage to property owned by the state.
- ~~p.~~ s. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental company.
- ~~q.~~ A claim resulting from the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the state has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance

requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

- (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
 - (2) The program logic accommodates same century and multicentury formulas and date values; and
 - (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic.
4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.
 5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of April 22, 1995.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 300

HOUSE BILL NO. 1084

(Industry, Business and Labor Committee)
(At the request of the Office of Management and Budget)

SCOPE OF EMPLOYMENT

AN ACT to amend and reenact subsection 6 of section 32-12.2-01 and subsection 2 of section 32-12.2-04 of the North Dakota Century Code, relating to the definition of scope of employment for purposes and payment of claims against the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 32-12.2-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Scope of employment" means the state employee was acting on behalf of the state in the performance of duties or tasks of the employee's office or employment lawfully assigned to the employee by competent authority or law. ~~Actions of a state employee that constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct are not within the scope of the employee's employment for purposes of this chapter.~~

SECTION 2. AMENDMENT. Subsection 2 of section 32-12.2-04 of the North Dakota Century Code is amended and reenacted as follows:

2. After receipt of notice of a claim, the director of the office of management and budget shall, in a timely manner, notify the head of the state entity involved, the attorney general, and any insurer or self-insurance pool providing coverage for that state entity. For claims over ~~five~~ ten thousand dollars, the director, in consultation with the head of the state entity involved and the attorney general, may settle claims covered by the state risk management fund if the claim is made in writing and settlement is approved ~~and signed~~ by the attorney general. The director of the office of management and budget may independently settle any claim covered by the state risk management fund if the claim is made in writing and the settlement is for not more than ~~five~~ ten thousand dollars.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 301

SENATE BILL NO. 2250

(Senators Trenbeath, Traynor, Triplett)
(Representatives Berg, Carlson, Kretschmar)

CONTRACT LIABILITY LIMITATIONS

AN ACT to authorize agencies to limit the liability to the state of certain contracting parties and to permit ratification of certain existing agreements limiting liability to the state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Contracts limiting liability to the state - Assumption of certain excess liability by the risk management fund. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, an agency may agree to limit the liability of a contractor to the state. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing and may only be approved for contracts for the purchase or lease of software, communication, or electronic equipment. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation.

SECTION 2. Ratifying contracts limiting liability to the state. Any employee or official of an agency who entered into a contract prior to the effective date of this Act requiring the agency to limit the liability of the contracting party will be deemed to be acting within the scope of the employee's or official's employment provided the contract is approved or ratified by the attorney general and the director of the office of management and budget and otherwise meets the conditions contained in section 1 of this Act.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 302

SENATE BILL NO. 2232

(Senators Holmberg, Traynor, Triplett)
(Representative Kretschmar)

MORTGAGE FORECLOSURE AND DEFICIENCY JUDGMENTS

AN ACT to create and enact section 32-19-06.2 of the North Dakota Century Code, relating to deficiency judgments on agricultural land; to amend and reenact sections 28-23-04, 28-24-02, 32-19-01, 32-19-03, 32-19-04, 32-19-06, 32-19-06.1, 32-19-07, 32-19-08, 32-19-09, 32-19-10, 32-19-11, 32-19-18, 32-19-20, 32-19-21, 32-19-22, 32-19-23, 32-19-24, 32-19-25, 32-19-26, 32-19-28, 32-19-29, 32-19-37, 32-19-38, 32-19-39, 32-19-40, and 32-19-41 and subdivision a of subsection 1 of section 35-03-19 of the North Dakota Century Code, relating to foreclosure of a mortgage; and to repeal sections 32-19-05, 32-19-12, 32-19-13, 32-19-14, 32-19-15, 32-19-16, 32-19-17, 32-19-30, 32-19-31, 32-19-32, 32-19-33, and 32-19-34 and chapter 32-19.1 of the North Dakota Century Code, relating to foreclosure of a mortgage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is amended and reenacted as follows:

28-23-04. Sale of real property - Notice of sale - Contents. Before any real property or interest therein taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:

1. If a newspaper is printed in the county where the real property to be sold is situated, the notice must be given by advertisement in a newspaper printed in the county once a week for three successive weeks, the last publication to be at least ten days prior to the making of the sale; and
2. In case no newspaper is printed in the county, then the officer making the sale shall cause the advertisement to be made by posting a copy of the advertisement on the outer door of the courthouse or building where the district court of the county was last held, and in five other public places in the county.

Except for parties who have an ownership interest in the real property subject to foreclosure of a mortgage under chapter 32-19 or ~~32-19.1~~, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days prior to the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

¹⁵⁵ **SECTION 2. AMENDMENT.** Section 28-24-02 of the North Dakota Century Code is amended and reenacted as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser within one year ~~(six months in redemptions under subsection 1 of section 32-19-1-04)~~ after the sale on paying the purchaser the amount of the purchase with interest at the rate provided in the original instrument on which the judgment is based, plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if the purchaser is also a creditor having a lien superior to that of the redemptioner other than the judgment under which the purchase was made, the amount of that lien with interest.

SECTION 3. AMENDMENT. Section 32-19-01 of the North Dakota Century Code is amended and reenacted as follows:

32-19-01. Action to foreclose mortgage on real estate authorized. ~~An~~ The plaintiff shall bring an action ~~may be brought in the district court for the foreclosure or satisfaction of a mortgage upon real property in accordance with the provisions of this chapter.~~

SECTION 4. AMENDMENT. Section 32-19-03 of the North Dakota Century Code is amended and reenacted as follows:

32-19-03. Who subject to deficiency judgment. ~~If the mortgage debt is secured by the obligation, or other evidence of debt, of any person other than the mortgagor, the plaintiff may make such other person a party to the action and the court may render judgment for the balance of the debt remaining unsatisfied after a sale of the mortgaged premises as against such other person and may enforce such judgment as in other cases by execution or other process. Nothing elsewhere contained in this chapter shall be construed to postpone or affect any remedies the creditor may have against any person personally liable for the debt, other than the mortgagor or purchaser and the successors in interest of either. The plaintiff may not obtain a deficiency judgment in a foreclosure of residential property with four or fewer units of up to forty contiguous acres [16.19 hectares] containing a residence occupied by the owner as a homestead. The plaintiff may obtain a deficiency judgment on agricultural land of more than forty acres [16.19 hectares] but solely for the difference between the amount of the debt and the fair market value of the land at the time of commencement of the action. The plaintiff may obtain a deficiency judgment in all other cases for the difference between the appraised value, as determined by a licensed appraiser appointed by the court at the request of the plaintiff, and the amount determined due. The cost of the appraisal is an allowable cost in the foreclosure action.~~

SECTION 5. AMENDMENT. Section 32-19-04 of the North Dakota Century Code is amended and reenacted as follows:

¹⁵⁵ Section 28-24-02 was also amended by section 1 of House Bill No. 1315, chapter 285.

32-19-04. What complaint shall state. In an action for the foreclosure or satisfaction of a mortgage, the complaint shall must state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof, and if there have been, whether any and what part thereof has been collected. The plaintiff shall also state in the complaint whether the plaintiff will in a later and separate action demand judgment for any sufficient allegations to identify the mortgage being foreclosed, to establish the applicable redemption period, and to determine whether a deficiency which may remain due to the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage judgment will be sought and against which parties.

¹⁵⁶ **SECTION 6. AMENDMENT.** Section 32-19-06 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06. What judgment must contain - Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises - Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court may shall render judgment for the amount found to be due at the time of the rendition of the judgment, and the costs of the action, and may shall order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court may order and compel delivery of the possession of the premises to the purchaser at the sale, but in no case may the possession of the premises sold be delivered until after the expiration of the ~~one-year~~ redemption period unless otherwise allowed ordered by the court pursuant to section 32-19-19. The court shall direct, and the judgment must provide, that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19. The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment; if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against

¹⁵⁶ Section 32-19-06 was also amended by section 1 of House Bill No. 1312, chapter 303.

the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment. The mortgagee or vendor or the successor in interest of either is not permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which the debt and the costs of the action exceed the fair value of the mortgaged premises. The fair value must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment must be enforced by execution as provided by law except that the execution may not be enforced after three years after the date of the rendition of the judgment.

SECTION 7. AMENDMENT. Section 32-19-06.1 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06.1. Deficiency judgments on commercial real property. Notwithstanding any other provision of law, a mortgagee holding a mortgage on commercial real property may obtain a deficiency judgment against the mortgagor of commercial real property contracted for after August 1, 1993, and any successor in interest of the mortgagor who has assumed the debt secured by the mortgage. In an action involving the foreclosure of a mortgage on commercial real property, the foreclosing party plaintiff shall state in its the pleading whether a deficiency judgment will be sought, and if sought shall identify the parties claimed to be personally liable for payment of the debt secured by the mortgage being foreclosed, and demand a deficiency judgment against those parties. Within ninety twenty days after the later of the filing or service of the pleading seeking the foreclosure of a mortgage, the party seeking a deficiency judgment on commercial real property shall file with the clerk of district court a notice for an completion of the appraisal of the real property by a licensed or certified, the appraiser and shall provide the plaintiff and file with the clerk of court a written report, including the fair market value of the property. The plaintiff shall mail a copy of the request to the parties claimed to be liable for a deficiency; of the appraisal to a party that may be personally liable at their last known the party's last-known residences or business addresses by first-class mail. The notice must contain the foreclosing party's agreement to pay the cost of the appraisal, which must be included as a cost allowed the foreclosing party if judgment is entered granting foreclosure. Upon the filing of the notice, the foreclosing party shall arrange for an appraisal of the property. Within twenty days after completion of the appraisal, the appraiser shall provide to the foreclosing party and file with the clerk of court a written report indicating the fair market value of the commercial real property. The foreclosing party shall also mail copies of the report to the parties claimed to be personally liable to their last known residences or business addresses by first-class mail. Within fifteen days of the later of the filing or mailing of the report of the foreclosing party's appraisal, any party may file a notice of intention to obtain an additional appraisal to be conducted by a licensed or certified appraiser at the party's own expense. The additional appraisal report must be served upon the

foreclosing party and filed within thirty days of the filing of the notice of appraisal and must be considered; with other appraisal reports filed, in the determination by the court of the fair market value of the property which determination as to fair market value must be made as of the date of the foreclosing party's appraisal. At the time of the entry of the judgment, the court shall include in its findings of fact the fair market value of the property and; if the fair market value is less than the amount found to be due the foreclosing party, identify the persons who are liable for any deficiency remaining after a sheriff's sale of the property pursuant to foreclosure judgment of any prior liens on the property. If the fair market value and the amount of any prior liens are less than the amount found to be due to the plaintiff. The court shall identify each person who is liable for any deficiency after the sheriff's sale. The foreclosure judgment must be in an amount equal to the balance then due and owing on the mortgage, plus costs taxed by the court. Upon entry of an order confirming the sheriff's sale in the foreclosure, the clerk of court shall note the amount to be credited on the foreclosure judgment, which credit must be at least the amount bid at the sheriff's sale, less the cost of the sheriff's sale as a credit on the foreclosure judgment, which credit may not in any event be less than the fair market value established by the court. However, only the Any amount actually paid in excess of the foreclosure judgment may constitute constitutes surplus payable to the debtor pursuant to section 28-23-09. At any time after the order confirming sale, the The clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable for the deficiency. The foreclosing party, then the plaintiff may thereafter pursue the same remedies to collect the deficiency judgment as are available to collect other money judgments. The deficiency judgment must be for the entire amount found to be due the foreclosing party in the foreclosure judgment, together with interest on the amount of the foreclosure judgment at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court upon entry of the order confirming the sheriff's sale. The deficiency judgment must bear interest at the same rate as the foreclosure judgment. As used in this section, "commercial real property" means any real property except residential real property consisting of fewer than three residential units and agricultural property, whose primary use is determined as of the time the mortgage is executed, as defined by section 57-02-01. As used in this section, "fair market value" means the highest price that commercial real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment, reduced by the value of any liens paramount to the lien of the foreclosing party. In addition to the appraisals filed by the parties appraisal, the court, in its determination of the fair market value of the property, may consider affidavits from the parties or other proof of paramount liens and other matters that may affect the value.

The provisions of this section are not available unless the obligation and mortgage upon which the deficiency liability is based contain language located immediately above the signatures of the parties advising them that the mortgagee has the right to proceed to obtain and collect a deficiency judgment; together with foreclosure of the real property mortgaged under applicable laws.

SECTION 8. Section 32-19-06.2 of the North Dakota Century Code is created and enacted as follows:

32-19-06.2. Deficiency judgments on agricultural land. If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair market value of the

mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though that party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may only be enforced by execution within three years from the date of entry of the judgment. If the judgment is not collected within three years, the judgment expires. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment.

SECTION 9. AMENDMENT. Section 32-19-07 of the North Dakota Century Code is amended and reenacted as follows:

32-19-07. Other suits permitted. Neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made between July 1, 1937, and July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given between July 1, 1937, and July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract. Except as otherwise provided in sections 32-19-04 and 32-19-06, neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made after July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given after July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract except as provided by sections 32-19-04 and 32-19-06. However, notwithstanding Notwithstanding any other provisions provision of state law, where a promissory note or other obligation and a mortgage, other than a first mortgage, upon real estate have been given to secure a debt contracted on or after August 1, 1993, a mortgagee may bring an action on the promissory note ~~or other obligation of the mortgage~~ if the mortgagee waives the right to foreclose the mortgage given to secure the note ~~or other obligation~~. The provisions of this section allowing. Allowing a mortgagee to bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note ~~or other obligation apply~~ applies only to residential real property consisting of four or fewer residential units.

SECTION 10. AMENDMENT. Section 32-19-08 of the North Dakota Century Code is amended and reenacted as follows:

32-19-08. Sales made by whom and where - Notice. All sales A sale of mortgaged premises under a judgment of foreclosure must be made in the county

where the premises, or some part of ~~them~~, the premises are situated. The sale must be made by the sheriff of that county ~~or~~, the sheriff's deputy, or by some person appointed by the court for that purpose, upon the notice and in the manner prescribed by law for the sale of real property upon execution.

SECTION 11. AMENDMENT. Section 32-19-09 of the North Dakota Century Code is amended and reenacted as follows:

32-19-09. Certificate of sale - Deed and effect. ~~Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this chapter. At the sheriff's sale, the officer or other person making the sale must give to the purchaser a certificate of sale as provided by section 28-23-11, and at the expiration of the time for the redemption of such property, if the same is not redeemed, the person or officer making the sale, or the successor in office, or other officer appointed by the court, must make to give the purchaser, the purchaser's heirs, or assigns, or to any person who has acquired the title of such the purchaser by redemption or otherwise, a deed or deeds of such the property. Such. The deed shall vest vests in the grantee all the right, title, and interest of the mortgagor in and to the property sold, at the time the mortgage was executed, or subsequently acquired by the mortgagor, and shall be is a bar to all claim, right, or equity of redemption in or to the property by the parties to such the action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which such judgment was rendered.~~

SECTION 12. AMENDMENT. Section 32-19-10 of the North Dakota Century Code is amended and reenacted as follows:

32-19-10. Application of proceeds. The proceeds of every foreclosure sale must be applied to the discharge of the debt adjudged by the court to be due and of the costs, and if there is any surplus, it must be brought into court ~~for the use of the defendant or of the person entitled thereto~~, subject to the order of the court. If the surplus is less than one thousand dollars and an application to receive the surplus is not filed with the court within sixty days after deposit, the court shall order the funds forfeited to the general fund of the county.

SECTION 13. AMENDMENT. Section 32-19-11 of the North Dakota Century Code is amended and reenacted as follows:

32-19-11. When surplus invested. ~~If the surplus upon a foreclosure sale, or any part thereof, shall remain in court for the term of three months without being applied for is one thousand dollars or more and is not applied for within ninety days, the judge of the district court may direct the same to be put out deposited at interest for benefit of the defendant, the defendant's representatives, or assigns, subject to the order of the court.~~

SECTION 14. AMENDMENT. Section 32-19-18 of the North Dakota Century Code is amended and reenacted as follows:

32-19-18. Redemption. ~~All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may be redeemed at any time within one year after such sale as prescribed by chapter 28-24. A party in a foreclosure action or the successor of a party may redeem from the foreclosure sale within sixty days after the sale, except for agricultural land. Agricultural land may be redeemed within three hundred sixty-five days after the filing of the summons and complaint in the office of the clerk of district court or the time of the first publication of the notice by~~

advertisement. The final date for redemption of agricultural land may not be earlier than sixty days after the sheriff's sale. The owner of the property has a paramount right to redeem upon paying the amount bid at the sheriff's sale plus interest on that amount at the same rate as the obligation secured by the mortgage. Persons holding subordinate liens on the property may redeem in the order of priority as determined by the order of attachment to the property. This redemption has the effect of a redemption as of the date of deposit, subject to the subsequent payment of any additional amount, if any, determined to be due as of that date.

SECTION 15. AMENDMENT. Section 32-19-20 of the North Dakota Century Code is amended and reenacted as follows:

32-19-20. Notice before foreclosure. At least thirty days and not more than ninety days before the commencement of any action or proceeding for the foreclosure of a mortgage on real estate, a written notice shall be served on the title owner of record of the real estate ~~described in the mortgage as shown by the records in the office of the recorder of the county in which such real estate is situated.~~

SECTION 16. AMENDMENT. Section 32-19-21 of the North Dakota Century Code is amended and reenacted as follows:

32-19-21. Contents of notice. The notice before foreclosure shall contain:

1. A description of the real estate.
2. The date and amount of the mortgage.
3. The amount due ~~for~~ to bring the installments of principal, and interest, and current as of a date specified, and the amount advanced by the mortgagee for taxes paid by the owner of the mortgage, stated, insurance, and maintenance, separately itemized.
4. A statement that if the amount due is not paid within thirty days from the date of the mailing or service of the notice proceedings will be commenced to foreclose the mortgage.

SECTION 17. AMENDMENT. Section 32-19-22 of the North Dakota Century Code is amended and reenacted as follows:

32-19-22. Notice may be served by registered ~~or certified~~ mail. The notice before foreclosure may be served by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the owner of record at the owner's post-office address as such address is shown by in the mortgage or by the records in the chain of title to such real estate in the office of the recorder of the county where the real estate is situated. If such post-office address is not shown in the mortgage or in such records, the notice may be served by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the owner of record at the post office nearest any part or tract of the real estate.

SECTION 18. AMENDMENT. Section 32-19-23 of the North Dakota Century Code is amended and reenacted as follows:

32-19-23. When notice not required. If the record title to real estate is in the name of a deceased person, ~~no~~ notice before foreclosure need not be served unless ~~an administrator or executor~~ a personal representative of the estate ~~of the deceased person has been~~ is appointed by the district court serving in the county in

which the real estate is situated. The certificate of the judge or clerk of the district court serving the county in which the real estate is situated stating that ~~no such administrator or executor~~ a personal representative has not been appointed in that county may be recorded in the office of the recorder and is sufficient evidence of that fact.

SECTION 19. AMENDMENT. Section 32-19-24 of the North Dakota Century Code is amended and reenacted as follows:

32-19-24. Service of notice on ~~administrator or executor~~ personal representative. If an ~~administrator or executor~~ a personal representative of the estate of the deceased owner has been appointed in the county where the real estate is situated, the notice before foreclosure must be served upon the ~~administrator or executor~~ personal representative. Service may be made by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the ~~administrator's or executor's~~ personal representative's post-office address as shown by the records of the district court by which the ~~administrator or executor~~ personal representative was appointed.

SECTION 20. AMENDMENT. Section 32-19-25 of the North Dakota Century Code is amended and reenacted as follows:

32-19-25. Notice may be served personally. Service of the notice before foreclosure may be made upon the title owner of record or upon the personal representative of the owner's administrator or executor estate by personal service ~~thereof either~~ within or without this state, ~~made~~ in the manner provided by law for the service of a summons in a civil action.

SECTION 21. AMENDMENT. Section 32-19-26 of the North Dakota Century Code is amended and reenacted as follows:

32-19-26. Actual receipt of notice always sufficient. In any case, service of the notice before foreclosure ~~shall be~~ is sufficient if it actually was received by the title owner of record or by the ~~administrator or executor~~ personal representative of the owner's estate. A United States post-office registry return receipt showing that the envelope containing the notice has been delivered to the ~~record title owner of record~~ or to the ~~administrator or executor~~ personal representative of the owner's estate, or to the agent of either, ~~shall be~~ is prima facie evidence that ~~such the~~ owner or ~~such the~~ owner's administrator or executor received the same.

SECTION 22. AMENDMENT. Section 32-19-28 of the North Dakota Century Code is amended and reenacted as follows:

32-19-28. Default may be cured. If the record title owner of record or the ~~administrator or executor~~ personal representative of the owner's estate, within thirty days from the service of notice before foreclosure, ~~shall perform~~ performs the conditions or ~~comply~~ complies with the provisions upon which default in the mortgage ~~shall have occurred, such the mortgage shall~~ must be reinstated and shall remain in full force and effect the same as though ~~no~~ a default had not occurred ~~therein in the mortgage.~~

SECTION 23. AMENDMENT. Section 32-19-29 of the North Dakota Century Code is amended and reenacted as follows:

32-19-29. Summons - How served. In addition to any other method provided by law for the service of The summons, in all actions for the a foreclosure

32-19-38. What the summons to contain. The summons mentioned in section 32-19-29 shall in a foreclosure action in which the persons unknown are

named as defendants must contain, or have appended ~~thereto~~ to the, a statement substantially as follows:

This action relates to the foreclosure of a mortgage or lien, as the case may be, upon (here describe the real estate involved in the action).

SECTION 26. AMENDMENT. Section 32-19-39 of the North Dakota Century Code is amended and reenacted as follows:

32-19-39. Judgment and decrees to be binding against whom. All orders, judgments, or decrees entered in any action ~~brought under the provisions of sections 32-19-29 through 32-19-38 shall be~~ are binding upon ~~all persons~~ each person proceeded against as ~~defendants~~ a defendant, whether of age or minors, and ~~all these~~ each person claiming by, through, or under ~~them~~ a defendant after the commencement of the action; ~~and all persons.~~ The same are binding upon whose interests did not appear of record in the office of the recorder, county auditor, or clerk of the district court of the county ~~wherein said~~ of the action is ~~brought~~ at the time of the commencement of the action.

SECTION 27. AMENDMENT. Section 32-19-40 of the North Dakota Century Code is amended and reenacted as follows:

32-19-40. Persons holding unrecorded conveyance need not be made parties, when. In any action to foreclose a mortgage or other lien upon real property, ~~no~~ a person holding a conveyance ~~from or under the mortgagor of the property mortgaged, or other owner thereof, nor one~~ having a lien upon ~~such the~~ property, if such conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not need to be made a party to ~~such the~~ action, and the judgment ~~therein~~ rendered and the proceedings ~~therein~~ shall be as in and of the action are conclusive ~~against the party holding such unrecorded conveyance or lien as if~~ such the party had been made a party to the action.

SECTION 28. AMENDMENT. Section 32-19-41 of the North Dakota Century Code is amended and reenacted as follows:

32-19-41. Abandoned personal property - Disposal by record title owner. ~~The record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement for which grantee in a sheriff's deed that has been issued and recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of without legal process any personal property left on the real property thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted. This section applies only to tracts of land not exceeding forty acres [16.19 hectares].~~

SECTION 29. AMENDMENT. Subdivision a of subsection 1 of section 35-03-19 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Mortgage" means a mortgage or mortgage lien ~~governed by the Short-term Mortgage Redemption Act as provided in chapter~~

~~32-19.4~~ covering an interest in real property in this state given to secure a loan in the original principal amount of five hundred thousand dollars or less.

SECTION 30. REPEAL. Sections 32-19-05, 32-19-12, 32-19-13, 32-19-14, 32-19-15, 32-19-16, 32-19-17, 32-19-30, 32-19-31, 32-19-32, 32-19-33, and 32-19-34 and chapter 32-19.1 of the North Dakota Century Code are repealed.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 303

HOUSE BILL NO. 1312 (Representatives DeKrey, Nicholas) (Senators Klein, Tallackson)

AGRICULTURAL PROPERTY DEFICIENCY JUDGMENTS

AN ACT to create and enact a new section to chapter 32-19 of the North Dakota Century Code, relating to deficiency judgments on agricultural land; and to amend and reenact section 32-19-06 of the North Dakota Century Code, relating to foreclosures of real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁷ **SECTION 1. AMENDMENT.** Section 32-19-06 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06. What judgment must contain - Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises - Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court may shall render judgment for the amount found to be due at the time of the rendition of the judgment; and the costs of the action; and may shall order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due ~~and the costs of the action~~. The court may order and ~~compel~~ delivery of the possession of the premises to the purchaser at the sale, but in ~~no~~ case may the possession of the premises sold be delivered until after the expiration of the ~~one-year~~ redemption period unless otherwise ~~allowed~~ ordered by the court pursuant to section 32-19-19. ~~The court shall direct, and the judgment must provide,~~ that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19. ~~The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment; if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the~~

¹⁵⁷ Section 32-19-06 was also amended by section 6 of Senate Bill No. 2232, chapter 302.

mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment. The mortgagee or vendor or the successor in interest of either is not permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which the debt and the costs of the action exceed the fair value of the mortgaged premises. The fair value must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment must be enforced by execution as provided by law except that the execution may not be enforced after three years after the date of the rendition of the judgment.

SECTION 2. A new section to chapter 32-19 of the North Dakota Century Code is created and enacted as follows:

Deficiency judgments on agricultural land. If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the cost of the action exceed the fair market value of the mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though the party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may be enforced only by execution within three years from the date of entry of the judgment. If the judgment is not collected within three years, the judgment expires. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment.