

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1354

Introduced by

Representatives Wald, Aarsvold

Senators Klein, Oehlke, Tallackson

1 A BILL for an Act to amend and reenact sections 26.1-23-04 and 26.1-23-08 of the North
2 Dakota Century Code, relating to property damage payments from the unsatisfied judgment
3 fund.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 26.1-23-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **26.1-23-04. Recovery from fund.** ~~When any~~

8 1. If a person, who is a resident of this state, recovers in any court in this state a
9 judgment for an amount exceeding three hundred dollars in an action for damages
10 resulting from bodily injury to; or the death of; any person or property damage to a
11 motor vehicle occasioned by; or arising out of; the ownership, maintenance,
12 operation, or use of a motor vehicle by the judgment debtor in this state, upon the
13 judgment becoming final, the judgment creditor may, in accordance with this
14 chapter, apply to the judge of the district court in which the judgment was
15 rendered, upon notice to the attorney general, for an order directing payment of the
16 judgment out of the fund.

17 2. Upon the hearing of the application, the judgment creditor shall show:

18 ~~4-~~ a. That the creditor has obtained judgment as set out in this section, stating the
19 amount ~~thereof~~ of the judgment and the amount owing ~~thereon~~ on the
20 judgment at the time of the application;
21 ~~2-~~ b. That the creditor has caused an execution to be issued ~~thereon~~ on the
22 judgment, and that:

- 1 a. ~~The~~ the sheriff has made a return ~~thereon~~ on the execution showing that ~~no~~
2 property of the judgment debtor liable to be seized in satisfaction of the
3 judgment debt; could not be found; or
- 4 b. ~~The~~ the amount realized on the sale of property seized, or otherwise realized
5 under the execution, was insufficient to satisfy the judgment, stating the
6 amount so realized and the balance remaining due ~~thereon~~ on the judgment;
- 7 ~~3.~~ c. That the creditor has caused the judgment debtor, when the debtor is
8 available, to be examined pursuant to law for that purpose, touching the
9 debtor's property, and in particular as to whether the debtor is insured under a
10 policy of automobile insurance against loss occasioned by the debtor's legal
11 liability for bodily injury to; or the death of; another person or property damage
12 to a motor vehicle if the creditor is seeking recovery for property damage to a
13 motor vehicle;
- 14 ~~4.~~ d. That the creditor has made an exhaustive search and inquiry to ascertain
15 whether the judgment debtor is possessed of property, real or personal, liable
16 to be sold or applied in satisfaction of the judgment; and
- 17 ~~5.~~ e. That as a result of the search, inquiry, and examination, the creditor has not
18 learned of ~~no~~ any property possessed by the judgment debtor and liable to be
19 sold or applied in satisfaction of the judgment debt, or that the creditor has
20 learned of certain property, describing it, owned by the judgment debtor and
21 liable to be seized or applied in satisfaction of the judgment, and has taken all
22 necessary proceedings for the realization ~~thereof~~ of the property, and that the
23 amount ~~thereby~~ realized was insufficient to satisfy the judgment, stating the
24 amount so realized and the amount remaining due ~~thereon~~ on the judgment.

25 **SECTION 2. AMENDMENT.** Section 26.1-23-08 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **26.1-23-08. Limitation on amount payable from fund - Nonassignable.**

- 28 1. Recovery from the fund is limited to payment of the following, exclusive of costs:
- 29 a. Ten thousand dollars for bodily injury, ~~including~~ to or death; of one person
30 and five thousand dollars for property damage to a motor vehicle in any one
31 accident claim.

- 1 b. Twenty thousand dollars for bodily injury, ~~including to or~~ death, of two or more
2 persons in any one accident.
- 3 2. The amount authorized to be paid must be within the limits provided by this
4 section, and must be determined as follows:
 - 5 a. If the judgment creditor has effected collection of a portion of the judgment
6 from any source, except as provided for in subdivisions b and c, the fund is
7 authorized to pay the creditor the difference between the amount collected
8 and the amount of the judgment, or ten thousand dollars, whichever is
9 smaller. If the judgment creditor has collected an amount equal to the limits
10 payable from the fund from the insurance or nonexempt assets of the
11 judgment debtor, then the creditor is precluded from recovery from the fund.
 - 12 b. If the judgment creditor has effected collection of a portion of the judgment
13 from payment from workforce safety and insurance, then the amount
14 collected from that source must be subtracted from the judgment before the
15 procedure outlined in subdivision a is followed.
 - 16 c. If the judgment creditor was covered by an uninsured motorist insurance
17 policy at the time of the accident, then the maximum liability limit of that policy
18 must first be subtracted from the judgment before the procedure outlined in
19 subdivision a is followed. If the maximum liability limit of the policy is equal to
20 the limits payable from the fund, then no recovery from the fund is allowed.
- 21 3. The right of any person to recover from the unsatisfied judgment fund is not
22 assignable and subrogation of the right is not allowed.