

JUDICIAL PROCEDURE, CIVIL

CHAPTER 284

SENATE BILL NO. 2287

(Senator W. Stenehjem)

(Representatives R. Kelsch, Mahoney, Wentz)

JUDGMENT AND SUPPORT PARTIAL PAYMENT

AN ACT to create and enact a new section to chapter 28-20 of the North Dakota Century Code, relating to application of a partial payment on a judgment; to amend and reenact subsection 6 of section 14-09-25 of the North Dakota Century Code, relating to partial payments on child support arrears; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²³ **SECTION 1. AMENDMENT.** Subsection 6 of section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~The Notwithstanding section 2 of this Act, the state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Interest accrued on unpaid judgments for child support is child support. To the extent consistent with the requirements of title IV-D, payments received on judgments for child support must first be applied to accrued interest, and then to the principal.~~

SECTION 2. A new section to chapter 28-20 of the North Dakota Century Code is created and enacted as follows:

Application of partial payments on judgments. A partial payment made on a judgment must be applied first to post-judgment costs. If the payment exceeds the costs, the excess amount must be applied toward satisfying the interest due. If the payment exceeds the costs and interest, the excess amount must be applied toward discharging the judgment amount, and the subsequent interest is to be computed on the balance of the judgment amount remaining due. If the payment falls short of satisfying the costs and interest, interest continues to accrue on the former judgment amount until a payment is made that exceeds the sum of the costs and interest due at the time of payment, and then the excess amount must be applied toward discharging the judgment amount, and interest accrues thereafter on the balance of the judgment amount remaining due. This section does not apply to the collection of any debt owed to the state or a political subdivision.

²²³ Section 14-09-25 was also amended by section 10 of Senate Bill No. 2170, chapter 141.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act applies to each partial payment made on or after the effective date of this Act.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 285

SENATE BILL NO. 2241

(Senators Flakoll, Krebsbach, T. Mathern)
(Representatives Fairfield, Martinson, Wald)

EXEMPTIONS FROM PROCESS

AN ACT to amend and reenact subsection 3 of section 28-22-03.1 of the North Dakota Century Code, relating to the absolute exemption of Roth individual retirement accounts in process, levy, and sale proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁴ **SECTION 1. AMENDMENT.** Subsection 3 of section 28-22-03.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Pensions, annuity policies or plans, and life insurance policies ~~which~~ that, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] ~~and~~, section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], or section 408A of the Internal Revenue Code [Pub. L. 105-34; 111 Stat. 825; 26 U.S.C. 408A], and pension or retirement plans sponsored by nonprofit corporations or associations organized and operated exclusively for one or more of the purposes specified in 26 U.S.C. 501(c)(3), and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection, "reasonably necessary for the support" means required to meet present and future

²²⁴ Section 28-22-03.1 was also amended by section 4 of House Bill No. 1238, chapter 260.

needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 286

SENATE BILL NO. 2219

(Senators B. Stenehjem, Kinnoin, Thompson)
(Representatives Bernstein, Grande, Mickelson)

ADMINISTRATIVE RULES FILING

AN ACT to amend and reenact subsection 4 of section 28-32-02 of the North Dakota Century Code, relating to the filing of proposed administrative rules with the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁵ **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent, provide a phone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules. The agency shall mail a copy of the notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later of the date of the second publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the second publication, whichever is later. Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on the first business day of the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than thirty days during which

²²⁵ Section 28-32-02 was also amended by section 1 of Senate Bill No. 2027, chapter 287, and section 1 of House Bill No. 1365, chapter 288.

data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 287

SENATE BILL NO. 2027 (Legislative Council) (Administrative Rules Committee)

ADMINISTRATIVE RULEMAKING NOTICE PUBLICATION

AN ACT to amend and reenact subsection 4 of section 28-32-02 of the North Dakota Century Code, relating to publication of notice of administrative rulemaking; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁶ **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent, provide a phone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and ~~published~~ the agency shall request publication of an abbreviated newspaper publication notice at least ~~twice~~ once in each daily newspaper of general circulation official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the address and telephone number to use to obtain a copy of the proposed rules or to submit written comments, and the location, date, and time of the public hearing on the rules. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later

²²⁶ Section 28-32-02 was also amended by section 1 of Senate Bill No. 2219, chapter 286, and section 1 of House Bill No. 1365, chapter 288.

of the date of the ~~second~~ publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the ~~second~~ publication, whichever is later. Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on the first business day of the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than thirty days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

SECTION 2. EFFECTIVE DATE. This Act is effective for administrative rulemaking notices filed with the office of the legislative council after July 31, 1999.

Approved April 14, 1999

Filed April 14, 1999

CHAPTER 288

HOUSE BILL NO. 1365

(Representatives Bernstein, Koppelman, Nelson)
(Senator B. Stenehjem)

SUPERINTENDENT OF PUBLIC INSTRUCTION RULEMAKING NOTICE

AN ACT to amend and reenact subsection 4 of section 28-32-02 of the North Dakota Century Code, relating to notice of rulemaking by the superintendent of public instruction; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁷ **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent, provide a phone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The agency shall mail a copy of the notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later of the date of the second publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the second publication, whichever is later. Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on the first business day of the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than thirty days during which data, views, or arguments

²²⁷ Section 28-32-02 was also amended by section 1 of Senate Bill No. 2219, chapter 286, and section 1 of Senate Bill No. 2027, chapter 287.

concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least thirty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 289

HOUSE BILL NO. 1025 (Legislative Council) (Administrative Rules Committee)

ADMINISTRATIVE RULES FROM FEDERAL GUIDELINES ADOPTION

AN ACT to amend and reenact sections 28-32-02.3, 28-32-02.4, and 40-08-06 of the North Dakota Century Code, relating to adoption of administrative rules from federal guidelines and adoption of rules by reference and appropriate circumstances and to the terms of office of city council members; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-02.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-02.3. Repeal or waiver of certain ~~environmental~~ rules.

1. An agency shall repeal or amend any existing rule that was adopted from federal ~~environmental~~ guidelines and which is not relevant to state regulatory programs.
2. An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.
3. An agency shall seek a waiver from the appropriate United States ~~environmental protection~~ agency when the ~~environmental protection~~ United States agency is evaluating current programs or delegating or modifying programs, to relieve the agency from complying with or adopting rules that are not relevant to state regulatory programs.

SECTION 2. AMENDMENT. Section 28-32-02.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-02.4. Permit and procedural rules adopted by reference in appropriate circumstances.

1. When adopting rules, an agency shall adopt by reference any applicable existing permit or procedural rules that may be adapted for use in a new or existing program.
2. An agency shall seek authorization from the appropriate United States ~~environmental protection~~ agency to adopt by reference applicable existing permit or procedural rules that may be adapted for use in a new or existing program when the ~~environmental protection~~ United States agency is delegating or modifying a program.

²²⁸ **SECTION 3. AMENDMENT.** Section 40-08-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-06. Term of office of council members - Staggered terms provided for in cities where other than ten council members elected. Council members shall hold office for four years and until their successors are elected and qualified. Terms of council members must be arranged so that ~~only~~ one-half of the council members in any city, as nearly as is practicable, are elected in any one election. When a city first adopts the council form of government or changes the number of council members, or when a city that has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alternation of the terms of the council members must be perfected as follows: of the council members elected in each ward, the one receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding the council member's election; if the city is not divided into wards, the one-half of the council members elected in the entire city receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding biennial election and the one-half of the council members elected in the entire city receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding their election. ~~Whenever, for any cause, more than one-half of the total number of council members in any ward, or more than one-half of the total number of council members in the city, if the city is not divided into wards, are to be elected in any one election, the length of the terms of the council members elected at the election must be determined as provided in this section.~~

SECTION 4. EFFECTIVE DATE. Sections 1 and 2 of this Act are effective for rulemaking proceedings commenced after July 31, 1999.

Approved April 7, 1999

Filed April 8, 1999

²²⁸ Section 40-08-06 was also amended by section 4 of House Bill No. 1181, chapter 208.

CHAPTER 290

SENATE BILL NO. 2393

(Senator Lindaas)

AGENCY AND ATTORNEY EX PARTE COMMUNICATIONS

AN ACT to amend and reenact section 28-32-12.1 of the North Dakota Century Code, relating to ex parte communications between an agency head and the agency head's litigation attorney.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-12.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-12.1. Ex parte communications.

1. Except as provided in ~~subsection~~ subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. ~~Unless~~ Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters

commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued, except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.

- ~~5.~~ 5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection ~~5~~ 6.
- ~~5.~~ 6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
- ~~6.~~ 7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
- ~~7.~~ 8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
- ~~8.~~ 9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

Approved March 29, 1999
Filed March 29, 1999