

JUDICIAL REMEDIES

CHAPTER 299

HOUSE BILL NO. 1303 (Representatives Drovdal, Kempenich) (Senator Urlacher)

SOCIAL SECURITY NUMBER FRAUDULENT USE DAMAGES

AN ACT to create and enact a new section to chapter 32-03 of the North Dakota Century Code, relating to the recovery of damages for fraudulent use of social security numbers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Damages for fraudulent use of social security number - Attorney's fees.

1. No person may buy or otherwise obtain or sell, offer for for sale, take or give in exchange, pledge or give in pledge, or use any individual's social security account number, or any derivative of the number, for the purpose of committing fraud or fraudulently using or assuming the individual's identity.
2. Any individual aggrieved by the act of any person in violation of subsection 1 may bring a claim for relief to recover any equitable relief as the court determines to be appropriate and the greater of the actual damages or liquidated damages of up to ten thousand dollars.
3. In addition to any damages or other relief awarded under subsection 2, if the aggrieved individual prevails, the court may assess against the defendant reasonable attorney's fees and any other litigation costs and expenses, including expert fees, reasonably incurred by the aggrieved individual.
4. Any action brought under this section is in addition to any criminal prosecution that may be brought under any state or federal law.

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 300

HOUSE BILL NO. 1242

(Representatives Porter, R. Kelsch, Severson)
(Senators Cook, Kilzer)

AUTOMATED EXTERNAL DEFIBRILLATOR REQUIREMENTS AND IMMUNITY

AN ACT to provide automated external defibrillator site requirements and civil liability immunity for the use of an automated external defibrillator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 of subsection 1, the person who provides the training under subdivision b 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 25, 1999

Filed March 25, 1999

CHAPTER 301

SENATE BILL NO. 2319

(Senators Lyson, Christmann, C. Nelson)

DUI EXEMPLARY DAMAGES

AN ACT to create and enact a new subsection to section 32-03.2-11 of the North Dakota Century Code, relating to exemplary damages for accidents involving motor vehicle operators under the influence of alcohol or a controlled substance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 32-03.2-11 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

In a civil action involving a motor vehicle accident resulting in bodily injury, it is sufficient for the trier of fact to consider an award of exemplary damages against the driver under the motion procedures provided in subsection 1 if clear and convincing evidence indicates that the accident was caused by a driver who, within the five years immediately preceding the accident has been convicted for violation of section 39-08-01 and who was operating or in physical control of a motor vehicle:

- a. With an alcohol concentration of at least ten one-hundredths of one percent by weight;
- b. Under the influence of a controlled substance unless a drug that predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to the driver;
- c. Under the influence of alcohol and refused to take a test required under chapter 39-20; or
- d. Under the influence of a volatile chemical as listed in section 12.1-31-06.

At the trial in an action in which the trier of fact will consider an award of exemplary damages, evidence that the driver has been convicted of violating section 39-08-01 or an equivalent statute or ordinance is admissible into evidence.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 302

SENATE BILL NO. 2194

(Senators Wardner, Klein, Kringstad)
(Representatives Glassheim, Keiser, Nottestad)

GARNISHMENT

AN ACT to amend and reenact sections 32-09.1-07, 32-09.1-20, and 32-09.1-21 of the North Dakota Century Code, relating to garnishment of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁰ **SECTION 1. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice. The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff and must state that after the expiration of the period of time specified in section 32-09.1-20, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

²³⁰ Section 32-09.1-07 was also amended by section 17 of House Bill No. 1044, chapter 51.

The garnishee summons and notice to defendant must be substantially in the following form:

State of North Dakota) County of _____) <hr style="width: 100%;"/> Plaintiff against <hr style="width: 100%;"/> Defendant and <hr style="width: 100%;"/> Garnishee)) ss.)	In _____ Court <hr style="width: 100%;"/> Garnishee Summons and Notice to Defendant
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The State of North Dakota to the above-named Garnishee:

You must serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, _____ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$_____. (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The date of entry of the judgment against the defendant was _____ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$_____.

The defendant must provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$_____. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount that remains unpaid.)

You must retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of ~~480~~ 270 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within ~~480~~ 270 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings are subject to garnishment.

Dated this _____ day of _____, 19____.

By: _____

NOTICE TO DEFENDANT

To: _____

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon _____, the garnishee.

(Attorneys for Plaintiff)

(Address)

(Telephone)

SECTION 2. AMENDMENT. Section 32-09.1-20 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-20. Termination of garnishment. A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of ~~one hundred eighty~~ two hundred seventy days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects ~~which that~~ that the garnishee has been retaining pursuant to the garnishment ~~shall must~~ must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

SECTION 3. AMENDMENT. Section 32-09.1-21 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-21. Continuing lien on wages. A plaintiff may obtain a ~~ninety-day~~ one hundred eighty-day continuing lien on wages by garnishment. ~~If a lien is to be obtained, the~~ A plaintiff obtaining a continuing lien on wages by garnishment shall mark "continuing lien" on the caption of the garnishee summons "continuing lien" and att. Each garnishment disclosure forms form must include the following:

~~Garnishee provide the~~ garnishee will continue to hold the nonexempt portion of the defendant's earnings as they the earnings accrue through the last payroll period ending on or before ninety one hundred eighty days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

At ~~the time of~~ the expected termination of the lien, the plaintiff shall mail to the garnishee an additional copy of the garnishment disclosure form upon which the garnishee within ten days shall make further disclosure.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 303

HOUSE BILL NO. 1037

(Legislative Council)
(Information Technology Committee)

YEAR 2000 IMMUNITY

AN ACT to provide for year 2000 information requests; to create and enact a new section to chapter 32-12 of the North Dakota Century Code, relating to the liability of the state for a contract claim resulting from the failure of computers or computer equipment; and to amend and reenact subsection 3 of section 32-12.1-03 and subsection 3 of section 32-12.2-02 of the North Dakota Century Code, relating to the liability of political subdivisions and the state for a claim resulting from the failure of computers or computer equipment as a result of the year 2000 date change.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Year 2000 information requests - Use - Exceptions.

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article 11 of the Constitution of North Dakota and the response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks, or devices containing a computer processor.
3. For purposes of this section, year 2000 processing includes calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action or proceeding.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.

6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.

SECTION 2. A new section to chapter 32-12 of the North Dakota Century Code is created and enacted as follows:

Claims resulting from year 2000 date change computer failures prohibited.

The state is not liable for a claim arising upon contract which is the result of 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 section, 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 the 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.

SECTION 3. AMENDMENT. Subsection 3 of section 32-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A political subdivision is not liable for any claim based upon an act or omission of ~~an a political subdivision employee of a political subdivision,~~ exercising due care; in the execution of a valid or invalid statute or regulation; ~~whether or not such statute or regulation be valid,~~ 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 ~~be is~~ abused. Specifically, a political subdivision or ~~an a~~ political subdivision employee ~~thereof~~ is not liable for any claim that results from:
 - a. 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. 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.
- c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion ~~be~~ 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 ~~subsection~~ subdivision does not provide immunity for damages resulting from acts of gross negligence.
- e. 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 political subdivision 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, a political subdivision 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 political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision 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.

This subsection does not limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of

any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

SECTION 4. AMENDMENT. Subsection 3 of section 32-12.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 resulting from the assessment and collection of taxes.
 - f. 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. A claim resulting from any injury caused by a wild animal in its natural state.
 - h. A claim resulting from the condition of unimproved real property owned or leased by the state.
 - i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
 - j. 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. A claim resulting from damage to the property of a patient or inmate of a state institution.
- l. 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. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. 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. A claim for damage to property owned by the state.
- p. 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 multcentury 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.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 304

SENATE BILL NO. 2110

(Transportation Committee)

(At the request of the Office of Management and Budget)

RISK MANAGEMENT MOTOR VEHICLE ACCIDENT REVIEW BOARD

AN ACT to create and enact a new section to chapter 32-12.2 of the North Dakota Century Code, relating to establishment of a risk management motor vehicle accident review board; and to amend and reenact subdivision a of subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to an exemption from the Administrative Agencies Practices Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³¹ **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 28-32-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The office of management and budget except with respect to rules made under section 2 of this Act, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

SECTION 2. A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

Risk management motor vehicle accident review board - Powers - Records - Meetings. The director of the office of management and budget shall establish a risk management motor vehicle accident review board to review any accident involving a motor vehicle owned or leased by the state and operated by a state employee. The board is composed of the director of the department of transportation, or the director's designee, who shall serve as chairman of the board; the director of the office of management and budget, or the director's designee; the superintendent of the highway patrol or the superintendent's designee; and two state employees selected by the other board members to serve two-year terms.

The risk management motor vehicle accident review board shall review accidents involving state-owned or state-leased vehicles operated by state employees

²³¹ Section 28-32-01 was also amended by section 4 of Senate Bill No. 2121, chapter 207.

in order to improve traffic safety and driver training and to reduce the number of traffic accidents. The board shall adopt rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations. Three members of the board constitute a quorum and an affirmative vote of at least three board members is required for the board to take action and make a recommendation.

The duties of the chairman include scheduling meetings; notifying participants; receiving and maintaining board records, reports, and other material; and communicating with agencies concerning the board's recommendations.

The department of transportation shall report state motor vehicle-related accidents to the board for review if it appears further training could have rendered the accident preventable or if there was a citation issued to the state employee operating the state-owned or state-leased motor vehicle. After review, the board may recommend driver training; defensive driver training; emergency vehicle operational training; physical, written, or operational examinations; or restrictions on the use of state-owned or state-leased motor vehicles. The state agency employing the employee operating the state-owned or state-leased motor vehicle involved in the traffic accident shall decide whether to implement the board's recommendation.

State employees must be paid and may not be required to take any leave for time needed to assist the board, and all state employers shall reimburse their employees for travel expenses incurred in assisting the board.

The board must be deemed to be a state agency loss-control committee under section 32-12.2-12 and all of the board's current or former members and all participants providing any verbal or written information to the board are entitled to the rights against production of records or testimony as contained in this section.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 305**SENATE BILL NO. 2409**

(Senators Traynor, Heitkamp)

PARTIES IN DECLARATORY ACTIONS

AN ACT to amend and reenact section 32-23-11 of the North Dakota Century Code, relating to parties in a declaratory action.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-23-11 of the North Dakota Century Code is amended and reenacted as follows:

32-23-11. Parties. When declaratory relief is sought, all persons who have or claim any interest ~~which~~ that would be affected by the declaration ~~shall~~ must be made parties, and ~~no~~ a declaration ~~shall~~ may not prejudice the rights of persons not parties to the proceeding. In any proceeding ~~which~~ that involves the validity of a municipal ordinance or franchise, ~~such~~ the municipality ~~shall~~ must be made a party, and ~~shall be~~ is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state ~~also shall~~ must be served with a copy of the proceeding and ~~shall be~~ is entitled to be heard. Any trade or professional association authorized to do, and doing, business in the state and whose members are licensed and regulated by state or federal agencies has standing to bring an action for declaratory judgment to determine any question of construction or validity of any statute, ordinance, resolution, rule, or regulation that threatens to injure its members.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 306

HOUSE BILL NO. 1067

(Representative Hoffner)

MINOR NAME CHANGES

AN ACT to amend and reenact section 32-28-02 of the North Dakota Century Code, relating to the name change of a minor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

32-28-02. Change of name of person - Petition.

1. Any person desiring to change ~~his or her~~ that person's name may file a petition in the district court of the county in which the person is a resident, setting forth:
 - ~~1.~~ a. That the petitioner has been a bona fide resident of the county for at least six months ~~prior to~~ before the filing of the petition.
 - ~~2.~~ b. The ~~cause~~ reason for which the change of the petitioner's name is sought.
 - ~~3.~~ c. The name ~~asked for~~ requested.
2. The judge of the district court, upon being duly satisfied by affidavit or proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days' previous notice of the intended application has been given in ~~some newspaper printed in the district~~ the official newspaper of the county in which the petitioner resides, shall order a change of the name of the petitioner. The court may waive publication of the notice when the proposed change relates only to a first or given name as distinguished from a surname.
3. If the person whose name is to be changed is a minor, the court shall consider the appointment of a guardian ad litem, and notice of the intended application must be published in the official newspaper of the county in which the minor resides and, if different, the official newspaper of the county in which each of the minor's parents reside. If the minor has a noncustodial parent, a copy of the notice must be deposited in a post office in this state, postage prepaid, not later than ten days after the publication of the notice, and directed to the noncustodial parent's last reasonably ascertained post office address. An affidavit of mailing of the notice prepared in accordance with the North Dakota Rules of Civil Procedure must be filed with court.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 307

SENATE BILL NO. 2303 (Senators Klein, D. Mathern) (Representative Berg)

FINANCIAL INSTITUTION YEAR 2000 LIABILITY

AN ACT relating to the liability of financial institutions and credit unions for malfunctions or failures of computer or other electronic systems as the result of a year 2000 disruption; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Comparative responsibility" means any act or omission that is negligent or willful, assumption of risk, breach of warranty, misuse of a product, or failure to use reasonable care to avoid or mitigate damage.
2. "Economic damages" means actual monetary losses proximately caused by a year 2000 disruption. The term does not include projected losses of future income or earnings and lost future business or employment opportunities.
3. "Year 2000 disruption" means a malfunction or failure of a computer or other electronic information or a malfunction or failure of an operating system or of equipment, including an electrical or telecommunications malfunction or failure, which prevents the system or equipment from correctly reading or processing data fields containing time or date information, functioning consistently regarding that time or date information, or from correctly calculating, comparing, or sequencing time or date information.
4. "Year 2000 readiness plan" means the process by which a federally insured financial institution or credit union prepares the computers and other electronic information and operating systems and equipment under the financial institution's or credit union's control to correctly read and process time and date information and to function consistently regarding that time and date information.

SECTION 2. Year 2000 readiness plan. Notwithstanding any other provision of law, this Act governs every claim for relief in which damages are sought from a federally insured financial institution or credit union for an alleged year 2000 disruption if the financial institution or credit union has made a good-faith effort to make and implement a year 2000 readiness plan. A financial institution or credit union that has substantially complied with the requirements of the financial institution's or credit union's primary federal regulator to address potential year 2000 disruptions is conclusively presumed to have made a good-faith effort to make and implement a year 2000 readiness plan.

SECTION 3. Time for commencing action. A claim for relief in connection with a year 2000 disruption must be commenced before January 1, 2001. Any claim that is not timely brought is barred.

SECTION 4. Requirement for privity of contract. A federally insured financial institution or credit union may not be held liable to any person not in privity of contract with the financial institution or credit union for damages or other relief relating to a year 2000 disruption.

SECTION 5. Liability for actual damages. The liability of a federally insured financial institution or credit union that experiences a year 2000 disruption is limited to actual economic damages.

SECTION 6. Comparative responsibility. A contributory act or omission does not bar recovery in an action under this Act, unless the contributory act or omission was as great as the combined responsibility of every other person whose act or omission contributed to the economic damages. Any damages allowed, however, must be diminished in proportion to the amount of a contributing act or omission that is attributable to the person making the recovery. The court may, and if requested by any party, shall direct the jury to find separate special verdicts determining the amount of economic damages and the percentage of responsibility attributable to each contributing person, regardless of whether the contributing person is a party to the action. In the case of contribution, the court shall reduce the amount of damages in proportion to the amount of responsibility to the person recovering. If two or more parties contributed, the liability of each party is several only and is not joint, and each party is liable only for the amount of damages attributable to the percentage of responsibility of that particular party.

SECTION 7. Elimination of damages other than economic damages. A party claiming relief from a federally insured financial institution or credit union as a primary consequence of a year 2000 problem may not be awarded punitive damages, consequential damages, extraordinary damages, noneconomic damages, or any other relief in excess of economic damages.

SECTION 8. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

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