

SENATE BILL NO. 2358

Introduced by

Senators Mutch, Tallackson, Thane, Trenbeath

Representative Weisz

1 A BILL for an Act to create and enact section 49-16-01.1 of the North Dakota Century Code,
2 relating to indemnity provisions on transfer of railroad rights of way; to amend and reenact
3 sections 49-16-05 and 60-06-06.1 of the North Dakota Century Code, relating to prohibition of
4 railroad indemnity agreements in right-of-way leases; and to provide for application.

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

6 **SECTION 1.** Section 49-16-01.1 of the North Dakota Century Code is created and
7 enacted as follows:

8 **49-16-01.1. Indemnity agreements void and unenforceable.**

- 9 1. A purchase agreement, deed, bill of sale, lease, license, or other agreement
10 pertaining to the sale, lease, license or other use of right of way, or other adjoining
11 property, between a railroad or its representative and a purchaser, lessee,
12 licensee, or other contracting party is void to the extent it does any of the following:
- 13 a. Purports to indemnify or require the defense of the railroad, or its employees,
14 agents, or independent contractors against any loss, liability, or other damage
15 that is caused by the sole or concurrent fault of the railroad or its employees,
16 agents, or independent contractors arising out of any claims or actions for
17 personal injury, death, property damage, or environmental damage or liability.
- 18 b. Requires the purchaser, lessee, licensee, or other contracting party to
19 purchase insurance providing coverage for the railroad or its employees,
20 agents, or independent contractors against any loss, liability, or other damage
21 that is caused by the sole or concurrent fault of the railroad or its employees,
22 agents, or independent contractors; or coverage or other indemnity protection
23 against any claim or action for personal injury, death, property damage, or

1 environmental damage or liability caused by the sole or concurrent fault of the
2 railroad or its employees, agents, or independent contractors.

3 c. Purports to exempt, or otherwise excuse, the railroad from any fault or other
4 responsibility for personal injury, death, property damage, or environmental
5 damage or liability caused by sole or concurrent acts of the railroad or its
6 employees, agents, or independent contractors, or for any environmental
7 damage or condition which exists at the time the purchase agreement, deed,
8 bill of sale, lease, license, or other agreement is entered.

9 2. As used in this section, "fault" is defined under section 32-03.2-01.

10 **SECTION 2. AMENDMENT.** Section 49-16-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **49-16-05. Contracts exempting railroad from liability void.** Any contract, rule,
13 regulation, or device ~~whatsoever~~ the purpose or intent of ~~which shall be to enable~~ enabling any
14 railroad ~~corporation~~ to exempt ~~itself~~ that railroad from any liability created by sections
15 49-16-01.1, 49-16-02, 49-16-03, 49-16-04, 49-16-05, and 49-16-08 to that extent ~~shall be~~ is
16 void. In any action brought against the railroad ~~corporation~~, under or by virtue of any of the
17 provisions of this chapter, the ~~corporation~~ railroad may set off ~~therein~~ in that action any sum it
18 has contributed or paid to any insurance relief benefit or indemnity that may have been paid to
19 the injured employee or to the person entitled ~~thereto~~ to the payment on account of the injury or
20 death for which ~~said~~ the action was brought.

21 **SECTION 3. AMENDMENT.** Section 60-06-06.1 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-06-06.1. Determination - Appropriation.** Any party may petition the public service
24 commission to determine rights governed under this chapter or to resolve lease disputes that
25 arise pursuant to right-of-way leases for any purpose between railroad right-of-way owners and
26 lessees. The commission shall determine the matter in accordance with chapter 28-32 and the
27 parties' rights of appeal are as limited by chapter 28-32. If the commission finds that any
28 right-of-way lease term or lease extension and renewal term is onerous, unduly burdensome, or
29 unfair to the lessee, the commission shall provide in its order that the term be removed from the
30 lease or modified to the extent necessary to be fair and reasonable to both parties. The
31 commission shall conduct each hearing required under this section in the county where the right

1 of way at issue is located. The parties to the determination proceeding shall pay the expense of
2 the proceeding, the compensation of any experts, and actual expenses of any employees of the
3 commission while engaged in the proceeding. The commission shall ascertain those costs and
4 expenditures and, after giving the parties notice and opportunity to be heard, and after a
5 hearing to determine the amount of cost and expenditures if a hearing is demanded by either of
6 the parties, shall render a bill and make and transmit to the parties an order for payment by
7 registered mail. Within ten days after receipt of the order, the parties shall pay to the
8 commission the amount of the costs and expenses. The commission shall deposit all costs and
9 expenses collected under this section in the general fund in the state treasury.

10 **SECTION 4. APPLICATION.** Section 49-16-01.1 applies to any purchase agreement,
11 deed, bill of sale, lease, license, or other agreement entered after the effective date of this Act,
12 and to any oral or written renewal, continuation, or extension of any prior agreement occurring
13 after the effective date of this Act.