

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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; to provide for a legislative council study;  
5 to provide for application; and to provide an expiration date.

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

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

9 **49-16-01.1. Indemnity agreements void and unenforceable.**

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

1                   indemnity protection against any claim or action for personal injury, death,  
2                   property damage, or environmental damage or liability caused by the sole or  
3                   concurrent fault of the railroad or its employees, agents, or independent  
4                   contractors.

5                   c. Purports to exempt, or otherwise excuse, the railroad from any fault or other  
6                   responsibility for personal injury, death, property damage other than property  
7                   damage subject to Public Law No. 104-88 [109 Stat. 847; 49 U.S.C. 11706],  
8                   or environmental damage or liability caused by sole or concurrent acts of the  
9                   railroad or its employees, agents, or independent contractors, or for any  
10                   environmental damage or condition which exists at the time the purchase  
11                   agreement, deed, bill of sale, lease, license, or other agreement is entered.

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

13                   3. Notwithstanding any other provision of law, a railroad may require indemnification  
14                   of and is not liable for any loss, liability, or damage to any purchaser, lessee,  
15                   licensee, or other contracting party, their employees, agents, or invitees.

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

18                   **49-16-05. Contracts exempting railroad from liability void.** Any contract, rule,  
19 regulation, or device ~~whatsoever~~ with the purpose or intent of ~~which shall be to enable~~ enabling  
20 any railroad ~~corporation~~ to exempt itself that railroad from any liability created by sections  
21 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  
22 void. In any action brought against the railroad ~~corporation~~, under or by virtue of any of the  
23 provisions of this chapter, the ~~corporation~~ railroad may set off ~~therein~~ in that action any sum it  
24 has contributed or paid to any insurance relief benefit or indemnity that may have been paid to  
25 the injured employee or to the person entitled ~~thereto~~ to the payment on account of the injury or  
26 death for which ~~said~~ the action was brought.

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

29                   **60-06-06.1. Determination - Appropriation.** Any party may petition the public service  
30 commission to determine rights governed under this chapter or to resolve disputes that arise  
31 pursuant to proposed agreements between railroad right-of-way owners and a nonrailroad

1 purchaser, lessee, or other user for any purpose, of a right of way. The commission shall  
2 determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as  
3 limited by chapter 28-32. If the commission finds that any term of a proposed right-of-way  
4 purchase agreement, crossing agreement, lease or lease extension and renewal agreement, or  
5 other agreement for use of right of way, including the purchase price, fee, or rent to be paid are  
6 onerous, unduly burdensome, or unfair to the nonrailroad purchaser, lessee, or other users, or  
7 do not equate to fair market value in the vicinity, the commission shall provide in its order that  
8 the term be removed from the agreement or prescribe modifications to that term so as to be fair  
9 and reasonable to both parties. The commission shall conduct each hearing required under  
10 this section in the county where the right of way at issue is located. The parties to the  
11 determination proceeding shall pay the expense of the proceeding, the compensation of any  
12 experts, and actual expenses of any employees of the commission while engaged in the  
13 proceeding. The commission shall ascertain those costs and expenditures and, after giving the  
14 parties notice and opportunity to be heard, and after a hearing to determine the amount of cost  
15 and expenditures if a hearing is demanded by either of the parties, shall render a bill and make  
16 and transmit to the parties an order for payment by registered mail. Within ten days after  
17 receipt of the order, the parties shall pay to the commission the amount of the costs and  
18 expenses. The commission shall deposit all costs and expenses collected under this section in  
19 the general fund in the state treasury.

20 **SECTION 4. LEGISLATIVE COUNCIL STUDY - ABANDONED AND SURPLUS**  
21 **RAILROAD RIGHTS OF WAY.** The legislative council shall consider studying, during the  
22 2003-04 interim, the sale and lease of abandoned and surplus railroad rights of way. The  
23 legislative council shall report its findings and recommendations, together with any legislation  
24 required to implement the recommendations, to the fifty-ninth legislative assembly.

25 **SECTION 5. APPLICATION.** Section 49-16-01.1 applies to any purchase agreement,  
26 deed, bill of sale, lease, license, or other agreement entered after the effective date of this Act,  
27 and to any oral or written renewal, continuation, or extension of any prior agreement occurring  
28 after the effective date of this Act.

29 **SECTION 6. EXPIRATION DATE.** This Act is effective through July 31, 2005, and  
30 after that date is ineffective.