

JUDICIAL PROCEDURE, CIVIL

CHAPTER 280

SENATE BILL NO. 2199

(Senators Brown, G. Lee)
(Representatives Devlin, Klemin, Kretschmar)

EXPERT OPINION IN MEDICAL NEGLIGENCE CASES

AN ACT to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to expert opinion required in certain civil cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-01-46 of the North Dakota Century Code is amended and reenacted as follows:

28-01-46. Expert opinion required to maintain an action based upon alleged medical negligence except in obvious cases. Any action for injury or death ~~against alleging professional negligence by a physician, nurse, or hospital, or nursing, basic, or assisted living facility licensed by this state based upon professional negligence or by any other health care organization, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility,~~ must be dismissed without prejudice on motion unless ~~the claimant has obtained an admissible expert opinion to support the allegation~~ plaintiff serves upon the defendant an affidavit containing an admissible expert opinion to support a prima facie case of professional negligence within three months of the commencement of the action or at such. The court may set a later date as set by the court for serving the affidavit for good cause shown by the plaintiff. The expert's affidavit must identify the name and business address of the expert, indicate the expert's field of expertise, and contain a brief summary of the basis for the expert's opinion. This section does not apply to ~~alleged lack of informed consent,~~ unintentional failure to remove a foreign substance from within the body of a patient, or performance of a medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious occurrence.

Approved March 14, 2005
Filed March 14, 2005

CHAPTER 281

HOUSE BILL NO. 1188

(Representatives Weiler, Carlson, Dietrich, Potter, Wieland)
(Senator J. Lee)

REAL ESTATE BREACH OF DUTY LIMITATIONS

AN ACT to create and enact a new section to chapter 28-01 of the North Dakota Century Code, relating to a three-year statute of limitations for an action resulting from a breach of duty with respect to a real estate transaction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-01 of the North Dakota Century Code is created and enacted as follows:

Action having three-year limitation. An action for recovery of damages against a person licensed under chapter 43-23 which results from a breach of duty relating to a real estate transaction must be commenced within three years after the claim for relief has accrued.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 282**SENATE BILL NO. 2181**

(Senators Holmberg, Trenbeath)

JUDGMENT AFFIDAVIT OF RENEWAL

AN ACT to amend and reenact section 28-20-22 of the North Dakota Century Code, relating to a judgment affidavit of renewal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20-22 of the North Dakota Century Code is amended and reenacted as follows:

28-20-22. Affidavit of renewal - Where filed - Entry. If the judgment was rendered in a court of this state, the affidavit for renewal must be filed with the clerk of court where the judgment was first docketed and the clerk of court shall file a copy of the affidavit for renewal in each county where the judgment was transcribed as requested by the judgment creditor. If the judgment filed and docketed was a foreign judgment, the affidavit for renewal may be filed with the clerk of any court where the same has been docketed and the clerk of court shall file a copy of the affidavit for renewal in each county where the judgment was transcribed as requested by the judgment creditor. The clerk of court shall immediately enter in the judgment docket the fact of renewal, the date of renewal, and the amount for which the judgment is renewed. ~~A copy of the affidavit of renewal and the docket entries thereon, certified by the clerk of court where the judgment is filed, must be filed and docketed in any other county of the state in which a transcript of the original judgment was filed.~~

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 283

SENATE BILL NO. 2302

(Senators Trenbeath, Grindberg)

(Representatives Iverson, Kretschmar, Thoreson)

POSTJUDGMENT INTEREST

AN ACT to amend and reenact section 28-20-34 of the North Dakota Century Code, relating to postjudgment interest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20-34 of the North Dakota Century Code is amended and reenacted as follows:

28-20-34. Interest rate on judgments. Interest is payable on judgments ~~recovered~~ entered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate may not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest is payable at the rate of twelve percent per annum through December 31, 2005. Beginning January 1, 2006, the interest is payable at a rate equal to the prime rate published in the Wall Street Journal on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point and may not be compounded in any manner or form. ~~interest~~ On or before the twentieth day of December each year, the state court administrator shall determine the rate and shall transmit notice of that rate to all clerks of court and to the state bar association of North Dakota. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year. Except as otherwise provided in this section, interest on all judgments ~~recovered~~ entered in the courts of this state before ~~July 4, 1984~~ January 1, 2006, must remain at the rate per annum which was legally prescribed at the time the judgments were entered, and such interest may not be compounded in any manner or form. Interest on unpaid child support obligations must be calculated under section 14-09-25 according to the rate currently in effect under this section regardless of the date the obligations first became due and unpaid.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 284

SENATE BILL NO. 2273

(Senators Nething, Espegard, Traynor)
(Representatives DeKrey, Delmore, Kretschmar)

LITIGATION BOND LIMITATION

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to limitations on bond requirements in litigation; to provide an effective date; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-21 of the North Dakota Century Code is created and enacted as follows:

Limitation on bond requirements in litigation.

1. In civil litigation under any legal theory, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review must be set in accordance with applicable laws or court rules, except that the total supersedeas bond that is required of all appellants collectively may not exceed twenty-five million dollars, regardless of the amount of the judgment.
2. Notwithstanding subsection 1, if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment.

SECTION 2. EFFECTIVE DATE. This Act becomes effective immediately upon its filing with the secretary of state.

SECTION 3. APPLICATION OF ACT. This Act applies to all actions pending or filed on or after its effective date.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 285

HOUSE BILL NO. 1315

(Representatives DeKrey, Klein, Mueller, Nicholas)
(Senators Klein, Taylor)

REDEMPTION PERIOD TIME LIMITS

AN ACT to amend and reenact section 28-24-02 of the North Dakota Century Code, relating to redemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵² **SECTION 1. AMENDMENT.** Section 28-24-02 of the North Dakota Century Code is amended and reenacted as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser ~~within one year (six months in redemptions under subsection 4 of section 32-19.1-04)~~ after the sale ~~on~~ by paying the purchaser the amount of the purchase with interest at the rate provided in the original instrument on which the judgment is based, plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if the purchaser is also a creditor having a lien superior to that of the redemptioner other than the judgment under which the purchase was made, the amount of that lien with interest. The period of redemption is six months for a redemption under subsection 1 of section 32-19.1-04 and for all other redemptions the period of redemption is one year. The period of redemption begins at the time of the filing of the summons and complaint in the office of the clerk of district court or at the time of the first publication of the notice before foreclosure by advertisement, unless it is determined by the court that the mortgagee is not entitled to judgment. The final date for redemption may not be earlier than sixty days after the sheriff's sale.

Approved March 14, 2005

Filed March 14, 2005

¹⁵² Section 28-24-02 was also amended by section 2 of Senate Bill No. 2232, chapter 302.

CHAPTER 286**SENATE BILL NO. 2159**

(Senator J. Lee)
(Representative Price)

MEDICAL ASSISTANCE AND CHIPS RULES

AN ACT to create and enact a new subsection to section 28-32-03 of the North Dakota Century Code, relating to interim final rules for medical assistance for needy persons and the children's health insurance program; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 28-32-03 of the North Dakota Century Code is created and enacted as follows:

The department of human services may adopt interim final rules without the finding required by subsection 2 to implement any changes necessary to simplify and align eligibility requirements of the medical assistance program described in chapter 50-24.1 and the children's health insurance program described in chapter 50-29 as much as possible and to allow for an efficient transition of cases into the electronic system used for these programs. Any interim final rules so adopted may take effect on a date no earlier than the date of filing with the legislative council of the notice of proposed adoption of a rule.

SECTION 2. EXPIRATION DATE. This Act is effective through July 1, 2007, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 2005
Filed March 22, 2005

CHAPTER 287

HOUSE BILL NO. 1421

(Representatives Bernstein, Grande, Koppelman, Skarphol)
(Senators Andrist, Wardner)

ADMINISTRATIVE RULES EFFECTIVE DATE

AN ACT to amend and reenact sections 28-32-10 and 28-32-12, subsection 2 of section 28-32-15, and sections 28-32-18 and 28-32-19 of the North Dakota Century Code, relating to the effective date, rulemaking notice, period for comments, review, and publication of administrative rules; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵³ **SECTION 1. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

28-32-10. Notice of rulemaking - Hearing date.

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. 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 comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone 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 the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
 - b. 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.

¹⁵³ Section 28-32-10 was also amended by section 1 of House Bill No. 1337, chapter 288.

The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.

2. 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.
3. 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~~ twenty 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.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least ~~thirty~~ twenty days must elapse between the ~~later of the date of the 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 publication, whichever is later. Subject to subsection 4, notices filed on or before the last calendar day of the preceding month. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council on the first business day of the following month to any person making a request who has paid the annual fee established under subsection 4.~~

SECTION 2. AMENDMENT. Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

28-32-12. Comment period. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ~~thirty~~ ten 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 3. AMENDMENT. Subsection 2 of section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective the first day of the month after the month of publication as provided for in section 28-32-19, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-18, the later date is the effective date. A rule found to be void by the administrative rules committee is void from the time provided under section 28-32-18 according to the following schedule:
 - (1) Rules filed with the legislative council from August sixteenth through November fifteenth become effective on the immediately succeeding January first.
 - (2) Rules filed with the legislative council from November sixteenth through February fifteenth become effective on the immediately succeeding April first.
 - (3) Rules filed with the legislative council from February sixteenth through May fifteenth become effective on the immediately succeeding July first.
 - (4) Rules filed with the legislative council from May sixteenth through August fifteenth become effective on the immediately succeeding October first.
- b. If publication is delayed due to technological problems or lack of funds for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective on the first day of the month after the month when publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

SECTION 4. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee within ninety days after not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at

~~the first meeting of the administrative rules committee following the regular session of the legislative assembly is scheduled to appear.~~ The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

- a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee finds that a rule is void, the office of the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted published by the agency to the legislative council for publication as amended, repealed, or created ~~and~~. If requested by the agency or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

SECTION 5. AMENDMENT. Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

28-32-19. Publication of administrative code and code supplement.

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise all or part of the code as often as the legislative council deems necessary.
2. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement; ~~in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are resolved or the necessary funds are available~~ according to the schedule of effective dates of rules in section 28-32-15.
 - a. The code supplement must contain all rules that have been filed with the office of the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement. ~~The office of the legislative council may establish a due date by which rules must be submitted by an agency for publication during any month.~~
 - b. The code supplement must contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17.
 - c. The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
4. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the

legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge for the actual cost of providing copies of the rules.

SECTION 6. EFFECTIVE DATE. This Act is effective for administrative rules for which notice of hearing is filed with the office of the legislative council after July 31, 2005.

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 288

HOUSE BILL NO. 1337

(Representatives Boehning, Devlin, Froelich, Wieland)
(Senator G. Lee)

RULES NOTICE TO LEGISLATION SPONSORS

AN ACT to amend and reenact subsection 2 of section 28-32-10 of the North Dakota Century Code, relating to notice of administrative agency rulemaking to members of the legislative assembly who were sponsors of legislation to be implemented by the rules; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁴ **SECTION 1. AMENDMENT.** Subsection 2 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The agency shall mail or deliver a copy of the agency's full notice to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and 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 each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to any person requesting a copy. The agency may charge persons who are not members of the legislative assembly for the actual cost of providing copies of the proposed rule.

SECTION 2. EFFECTIVE DATE. This Act is effective for administrative rules for which the notice of rulemaking is filed with the office of the legislative council after July 31, 2005.

Approved April 11, 2005
Filed April 12, 2005

¹⁵⁴ Section 28-32-10 was also amended by section 1 of House Bill No. 1421, chapter 287.