

HOUSE BILL NO. 1354

Introduced by

Representatives Wald, Aarsvold

Senators Klein, Oehlke, Tallackson

1 A BILL for an Act to amend and reenact sections 26.1-23-04 and 26.1-23-08 of the North
2 Dakota Century Code, relating to property damage payments from the unsatisfied judgment
3 fund.

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

5 **SECTION 1. AMENDMENT.** Section 26.1-23-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **26.1-23-04. Recovery from fund.** ~~When any~~

8 1. If a person, who is a resident of this state, recovers in any court in this state a
9 judgment for an amount exceeding three hundred dollars in an action for damages
10 resulting from bodily injury to; or the death of; any person or property damage
11 occasioned by; or arising out of; the ownership, maintenance, operation, or use of
12 a motor vehicle by the judgment debtor in this state, upon the judgment becoming
13 final, the judgment creditor may, in accordance with this chapter, apply to the judge
14 of the district court in which the judgment was rendered, upon notice to the
15 attorney general, for an order directing payment of the judgment out of the fund.

16 2. Upon the hearing of the application, the judgment creditor shall show:

17 ~~4.~~ a. That the creditor has obtained judgment as set out in this section, stating the
18 amount ~~thereof~~ of the judgment and the amount owing ~~thereon~~ on the
19 judgment at the time of the application;

20 ~~2.~~ b. That the creditor has caused an execution to be issued ~~thereon~~ on the
21 judgment, and that:

22 a. ~~The~~ the sheriff has made a return ~~thereon~~ on the execution showing that ~~no~~
23 property of the judgment debtor liable to be seized in satisfaction of the
24 judgment debt; could not be found; or

- 1 b. ~~The~~ the amount realized on the sale of property seized, or otherwise realized
2 under the execution, was insufficient to satisfy the judgment, stating the
3 amount so realized and the balance remaining due ~~thereon~~ on the judgment;
- 4 ~~3.~~ c. That the creditor has caused the judgment debtor, when the debtor is
5 available, to be examined pursuant to law for that purpose, touching the
6 debtor's property, and in particular as to whether the debtor is insured under a
7 policy of automobile insurance against loss occasioned by the debtor's legal
8 liability for bodily injury to, or the death of, another person or property damage
9 if the creditor is seeking recovery for property damage;
- 10 4. d. That the creditor has made an exhaustive search and inquiry to ascertain
11 whether the judgment debtor is possessed of property, real or personal, liable
12 to be sold or applied in satisfaction of the judgment; and
- 13 ~~5.~~ e. That as a result of the search, inquiry, and examination, the creditor has not
14 learned of ~~no~~ any property possessed by the judgment debtor and liable to be
15 sold or applied in satisfaction of the judgment debt, or that the creditor has
16 learned of certain property, describing it, owned by the judgment debtor and
17 liable to be seized or applied in satisfaction of the judgment, and has taken all
18 necessary proceedings for the realization ~~thereof~~ of the property, and that the
19 amount ~~thereby~~ realized was insufficient to satisfy the judgment, stating the
20 amount so realized and the amount remaining due ~~thereon~~ on the judgment.

21 **SECTION 2. AMENDMENT.** Section 26.1-23-08 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **26.1-23-08. Limitation on amount payable from fund - Nonassignable.**

- 24 1. Recovery from the fund is limited to payment of the following, exclusive of costs:
- 25 a. Ten thousand dollars for bodily injury, ~~including to or~~ death, of one person
26 and five thousand dollars for property damage in any one accident claim.
- 27 b. Twenty thousand dollars for bodily injury, ~~including to or~~ death, of two or more
28 persons in any one accident.
- 29 2. The amount authorized to be paid must be within the limits provided by this
30 section, and must be determined as follows:

- 1 a. If the judgment creditor has effected collection of a portion of the judgment
2 from any source, except as provided for in subdivisions b and c, the fund is
3 authorized to pay the creditor the difference between the amount collected
4 and the amount of the judgment, or ten thousand dollars, whichever is
5 smaller. If the judgment creditor has collected an amount equal to the limits
6 payable from the fund from the insurance or nonexempt assets of the
7 judgment debtor, then the creditor is precluded from recovery from the fund.
- 8 b. If the judgment creditor has effected collection of a portion of the judgment
9 from payment from workforce safety and insurance, then the amount collected
10 from that source must be subtracted from the judgment before the procedure
11 outlined in subdivision a is followed.
- 12 c. If the judgment creditor was covered by an uninsured motorist insurance
13 policy at the time of the accident, then the maximum liability limit of that policy
14 must first be subtracted from the judgment before the procedure outlined in
15 subdivision a is followed. If the maximum liability limit of the policy is equal to
16 the limits payable from the fund, then no recovery from the fund is allowed.
- 17 3. The right of any person to recover from the unsatisfied judgment fund is not
18 assignable and subrogation of the right is not allowed.