

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2315

Introduced by

Senators Campbell, Anderson, Luick

Representatives Monson, Paur, Trottier

1 A BILL for an Act to amend and reenact section 32-12.1-03 of the North Dakota Century Code,
2 relating to liability of political subdivisions.

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

4 **SECTION 1. AMENDMENT.** Section 32-12.1-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **32-12.1-03. Liability of political subdivisions - Limitations.**

- 7 1. Each political subdivision is liable for money damages for injuries when the injuries are
8 proximately caused by the negligence or wrongful act or omission of any employee
9 acting within the scope of the employee's employment or office under circumstances
10 in which the employee would be personally liable to a claimant in accordance with the
11 laws of this state, or injury caused from some condition or use of tangible property,
12 real or personal, under circumstances in which the political subdivision, if a private
13 person, would be liable to the claimant. The enactment of a law, rule, regulation, or
14 ordinance to protect any person's health, safety, property, or welfare does not create a
15 duty of care on the part of the political subdivision, its employees, or its agents, if that
16 duty would not otherwise exist.
- 17 2. The liability of political subdivisions under this chapter is limited to a total of two
18 hundred fifty thousand dollars per person and ~~five hundred thousand~~ one million
19 dollars for injury to three or more persons during any number of claims arising from any
20 single occurrence regardless of the number of political subdivisions, or employees of
21 such political subdivisions, which are involved in that occurrence. A political
22 subdivision may not be held liable, or be ordered to indemnify an employee held liable,
23 for punitive or exemplary damages.

- 1 3. A political subdivision or a political subdivision employee may not be held liable under
2 this chapter for any of the following claims:
- 3 a. A claim based upon an act or omission of a political subdivision employee
4 exercising due care in the execution of a valid or invalid statute or regulation.
- 5 b. The decision to undertake or the refusal to undertake any legislative or
6 quasi-legislative act, including the decision to adopt or the refusal to adopt any
7 statute, charter, ordinance, order, regulation, resolution, or resolve.
- 8 c. The decision to undertake or the refusal to undertake any judicial or quasi-judicial
9 act, including the decision to grant, to grant with conditions, to refuse to grant, or
10 to revoke any license, permit, order, or other administrative approval or denial.
- 11 d. The decision to perform or the refusal to exercise or perform a discretionary
12 function or duty, whether or not such discretion is abused and whether or not the
13 statute, charter, ordinance, order, resolution, regulation, or resolve under which
14 the discretionary function or duty is performed is valid or invalid.
- 15 e. Injury directly or indirectly caused by a person who is not employed by the
16 political subdivision.
- 17 f. A claim relating to injury directly or indirectly caused by the performance or
18 nonperformance of a public duty, including:
- 19 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so
20 act regarding compliance with or the violation of any law, rule, regulation, or
21 any condition affecting health or safety.
- 22 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
23 sentencing, parole, probation, or juvenile supervision.
- 24 (3) Providing or failing to provide law enforcement services in the ordinary
25 course of a political subdivision's law enforcement operations.
- 26 (4) Providing or failing to provide fire protection services in the ordinary course
27 of a political subdivision's fire protection operations.
- 28 g. "Public duty" does not include action of the political subdivision or a political
29 subdivision employee under circumstances in which a special relationship can be
30 established between the political subdivision and the injured party. A special
31 relationship is demonstrated if all of the following elements exist:

- 1 (1) Direct contact between the political subdivision and the injured party.
- 2 (2) An assumption by the political subdivision, by means of promises or actions,
3 of an affirmative duty to act on behalf of the party who allegedly was injured.
- 4 (3) Knowledge on the part of the political subdivision that inaction of the political
5 subdivision could lead to harm.
- 6 (4) The injured party's justifiable reliance on the political subdivision's
7 affirmative undertaking, occurrence of the injury while the injured party was
8 under the direct control of the political subdivision, or the political
9 subdivision action increases the risk of harm.
- 10 4. This chapter does not obligate political subdivisions for an amount that is more than
11 the limitations upon liability imposed by this chapter. Subject to this chapter, any
12 payments to persons constitute payment in full of any compromised claim or judgment
13 or any final judgment under this chapter.
- 14 5. Notwithstanding this chapter, a political subdivision or its insurance carrier is not liable
15 for any claim arising out of the conduct of a ridesharing arrangement, as defined in
16 section 8-02-07.
- 17 6. A political subdivision is not liable for any claim based on an act or omission in the
18 designation, repair, operation, or maintenance of a minimum maintenance road if that
19 designation has been made in accordance with sections 24-07-35 through 24-07-37
20 and if the road has been maintained at a level to serve occasional and intermittent
21 traffic.