

March 10, 2023

John Ward, Association of North Dakota Insurers

## Testimony in support of SB 2241

Good Morning Chairman Porter and Members of the Committee:

My name is John Ward and I am local Bismarck attorney and lobbyist representing the Association of North Dakota Insurers or ANDI. ANDI is composed of North Dakota domestic insurance companies and other members. ANDI's members include Nodak Insurance, Center Mutual, Farmers Union, Heartland, and EMC, among others.

I am here today in support of SB2241 which seeks to amend NDCC § 32-03-30, which relates to Damages for Wrongful Injuries to Timber. NDCC § 32-03-30 provides as follows:

For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment.

(the "Timber Statute")

The Timber Statute has been on the books in some form since 1877. The Language of the Timber Statute is somewhat antiquated and the purpose of this revision is to clarify that the act applies to intentional acts, where a person intentionally injures another person's trees or shrubs, specifically with the intent to actually harm or damage the trees of another. There has been some confusion in the Courts with the 1877 language that is still on the books.

The amended bill before this committee seeks to clarify that a person, who cuts down his or her neighbor's tree, may be responsible for three times the value of the tree. It is imperative that the person causing the tree damage is acting with the intent to do the harm.

The amended language is as follows:

~~For wrongful~~intentional injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, ~~except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment.~~

I also work as an attorney for the firm Evenson Sanderson, PC in Bismarck. My firm has litigated many of these tree damage cases. Plaintiff's lawyers often try to blur the lines between intentional and merely negligent acts. The 1877 language of the Timber Statute relies on the term "casual and involuntary" to take a person out of the required intent to be liable for treble damages or triple damages under the former 1877 statute that remains on the books today. The Amended Bill before you removes the confusing standard of "casual and involuntary" and clarifies that this statute only applies where there is intent to cause damage to someone's trees.

A person who unintentionally or negligently causes damages to trees may still be held liable for those damages under a variety of other statutes that are already in the Century Code. A person can sue for unintentional damage to their trees and bushes under NDCC §§ 32-03-09, 32-03-09.1, 32-03-9.2, and 32-03-20. The important distinction being made in SB 2241 is that there is no claim for unintentional damages that can be brought under NDCC § 32-03-30.

Those statutes that provide for unintentional damages are cited below:

**32-03-09. Measure of damages for breach of contract - Damages must be certain.**

For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by the laws of this state, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby or which in the ordinary course of things would be likely to result therefrom. No damages can be recovered for a breach of contract if they are not clearly ascertainable in both their nature and origin.

**32-03-09.1. Measure of damages for injury to property not arising from contract.**

The measure of damages for injury to property caused by the breach of an obligation not arising from contract, except when otherwise expressly provided by law, is presumed to be the reasonable cost of repairs necessary to restore the property to the condition it was in immediately before the injury was inflicted and the reasonable value of the loss of use pending restoration of the property, unless restoration of the property within a reasonable period of time is impossible or impracticable, in which case the measure of damages is presumed to be the difference between the market value of the property immediately before and immediately after the injury and the reasonable value of the loss of use pending replacement of the property. Restoration of the property shall be deemed impracticable when the reasonable cost of necessary repairs and the reasonable value of the loss of use pending restoration is greater than the amount by which the market value of the property has been diminished because of the injury and the reasonable value of the loss of use pending replacement.

**32-03-09.2. Liability for willful damages to property.**

Any person convicted of criminal mischief shall be responsible for the actual damages to real and personal property and such damages may be recovered in a civil action in a court of competent jurisdiction. Additionally, any minor against whose parents a judgment may be entered pursuant to section 32-03-39 for damages resulting from action of the minor shall be jointly and severally liable with the parents of the minor for such action up to the

maximum amount provided in section 32-03-39 and solely liable for any damages over that amount. Any judgment rendered pursuant to this section shall not be discharged in bankruptcy and shall not be subject to the statutes of limitations provided in chapter 28-01, nor shall such judgment be canceled pursuant to section 28-20-35.

**32-03-20. Measure of damages for tort.**

For the breach of an obligation not arising from contract, the measure of damages, except when otherwise expressly provided by law, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

SB 2241 eliminates unnecessary and confusing language from the Timber Statute. This bill has come to the attention of ANDI after having litigated many of these cases in recent years, where Plaintiff's attorneys sought outrageous damages for relatively common, unintentional occurrences, such as a fire caused by a combine fire during harvest. Thousands of combine fires occur every year in the US.

The consequences of the ambiguity in the existing 1877 language is that treble damages are presumed to apply unless the Defendant can show that the action causing the fire was "casual and involuntary". Well, what does that mean?

After having seen so many farmers or landowners face shocking tree claims from aggressive Plaintiff's attorneys, it was decided that ANDI would try and fix this issue. There is nothing worse than having to tell a client/insured that their neighbor is claiming that the old Siberian Elm and Russian Olive tree row is worth \$1,000,000. And worse yet, that the same neighbor is seeking treble damages, in other words, \$3,000,000. If the Landowner has \$2,000,000 dollars of coverage, they are exposed and potentially personally liable for \$1,000,000. That leaves the farmer exposed. Now, he might literally "lose the farm" unless he can show his actions were "casual and involuntary" ...whatever that means.

The proposed revisions to NDCC § 32-03-30 are to clarify that the statute only applies to intentional injuries to trees, shrubs, or underwood.

ANDI urges a DO PASS on SB 2241.

Thank you

Sincerely,

John Ward