

## SB 2241 Wrongful Damage to Timber

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Chairman Larsen, members of the Senate Business and Labor committee, good morning. My name is Chris Oen, VP of Claims with Nodak Insurance Company. I present to you today on behalf of Nodak Insurance Company and the Association of ND Insurers testifying in favor of SB 2241 and ask for a "Do Pass" vote by this committee. ANDI represents those insurance companies that are domesticated and operate in North Dakota. Those primary members being Heartland Mutual of Minot, ND; Center Mutual Insurance of Rugby, ND; Farmers Union Insurance of Jamestown; and Nodak Insurance Company of Fargo.

North Dakota Century Code 32-03-30 defines "Damages for wrongful injuries to timber". As I was preparing for my testimony, I ended up going down a huge black hole in attempting to find the basis of why this was in our ND statutes. The best that I could find was it originated in 1913 (110 years ago) finding the first rendition of this law in the Compiled Laws of the State of ND 1913.

The further I looked (which gave a lot of uncertainty for sure) was this law was based on the founding of our state, with inter and intra state transportation exploded. Think back to 1913 with railroads and roadways being built. Landowners were subject to railways coming through their property in explosive fashions.

In the early 1900's trees in North Dakota were likely at a premium. Landowners did not want them haphazardly removed and I believe this law was designed and implemented to give those landowners rights and recovery for removal of timber. And when that timber was removed, the law set a premium – note the "measure of damages is three times such a sum would compensate for the actual detriment". Keep that in mind.

Fast forward to today. While timber and trees are still important to property owners, why should ND have a law that unduly punishes an entity that inadvertently causes property damage to trees? Within insurance liability claims, we see most commonly the following claims that arise out of farming practices, fire and chemical drift.

Farmers in ND have been faced with lawsuits in such manners. Nodak currently has litigation pending where our insured was haying. As he turned around at the end of the field, he noticed a fire had started. This fire was likely due to a rock being struck by the equipment and sparked. By the time the fire was contained, it burned into a tree row owned by an adjacent landowner.

With this law, a demand for payment for the damage to the timber was the value of the timber times 3. The loss to the timber demand is actually well over 5X the actual real property value of the land itself.

The next part of 32-03-30 does talk about trespass being "casual and involuntary" and that would seem to put the damages at the actual detriment. But again, what does "casual and involuntary" mean? Take the scenario of a spray drift. If a wind changes direction or suddenly increases in speed, does that not make it casual? You can start to see the issue with this law.

Nearly every claim or event that we see from the insurance side is usually farmer against farmer, landowner against landowner. The undue nature and harshness of this law should not go unrecognized. Why would it be in the best interest of a state that prides itself on agriculture to penalize for one singular type of property damage – trees & timber? We don't have any other similar law that penalizes someone for causing property damage. We don't have laws that triple the cost of remedy if a person were to hit a building with a car? ND has no similar law regarding specific property damage.

Removal of this statute would set the remedy of what it should be, what is the value of the trees or timber lost. It won't solve how that is calculated, there will still be differing of opinions on what the value of a tree is. But it takes out the confusion of what is the level of responsibility against the wrongdoer, along with removing an antiquated and punitive penalty of tripling the damages calculated.

Also, I can tell you with my experience working in claims for over 25 years, there is another issue of the punitive nature of this law. There is case law across the country that treble damage (as in this statute) are not covered by insurance coverage. Treble damages at its source are meant to punish the wrongdoer. North Dakota has its own statute that states punitive damages are not to be covered by insurance.

The reality if this law were to continue to exist is that a farmer or person as mentioned above could face uncovered damages.

There will be subsequent testimony about this proposed bill. Let's be clear, no one is attempting to remove the ability for a person or entity that suffers damage to trees or timber to be restricted or waived from making a claim. There are statutes in ND that allow for those claims to happen. My testimony is strictly to remove the punishing nature of this antiquated law to be removed and allow proper claims for damage to be heard by the court. I anticipate that you will hear further testimony that will support the ability for those affected by tree claims to still be clearly and definitively allowed under other statute to bring those claims.