

January 25, 2023

John Ward, Association of North Dakota Insurers

## Testimony in support of SB 2241

Good Morning Chairman Larsen and Members of the Committee:

My Name is John Ward. I am here representing the Association of North Dakota Insurers or ANDI. ANDI is an association of North Dakota domestic insurance companies.

I am here today in support of SB2241 which seeks to repeal 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 Timber Statute no longer is necessary as our Century Code has been updated since the days of North Dakota’s territorial laws. A person who suffers injury to timber, trees, or underwood (which are essentially trees and bushes) can sue the person causing the damage under a variety of tort theories or other statutes that are already in the Century Code.

A person can sue for damages to their trees and bushes under NDCC §§ 32-03-09, 32-03-09.1, 32-03-9.2, and 32-03-20. These statutes respectively provide that a person whose trees or shrubs are damaged or destroyed can sue for the damages that they suffered to their property. Those statutes 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 this unnecessary statute from the Century Code. The Timber Statute came to the attention of ANDI, as Plaintiff's Lawyers have sought to take advantage of the somewhat archaic language in the statute in an attempt to obtain large verdicts. This is because the Timber Statute provides that all actual damages suffered by the injured person are trebled, if the damages are "casual and involuntary". In a recent case that went up to the North Dakota Supreme Court, the jury found actual damages of \$40,500.00 and costs of \$4,597.79 but because of the treble damages provision under the statute the award was tripled to \$126,097.79. Haider v. Moen, 2018 ND 174. The archaic language that is at issue is the term "casual", which has a different meaning now as opposed to the year 1877. It seems that there has been significant juror confusion over the term "casual".

The consequences of the treble damages provision under the Timber Statute is that a party causing damages could be uninsured or underinsured depending on the outcome of the verdict. This would cause substantial loss to fall on that party personally.

Finally, this statute places a reverse presumption on the party causing the damage. This is different than other civil lawsuits, where the Plaintiff bears the burden of proving to the jury that the party causing the damage did so (not casually or involuntarily). In this circumstance, the burden is shifted to the party

causing the damage to prove that it was casual and involuntary. In other words, the person seeking damages under the Timber Statute automatically starts with three times the amount of their actual damages, subject to the ability of the party causing the damage to prove otherwise.

In conclusion, the repeal of this statute will not affect a person's ability to bring a lawsuit to recover for his or her actual tree damage, it will simply remove an outdated statute from our code that in current practice is being abused.

ANDI urges a DO PASS on SB 2241.

Thank you for your time and attention,

John Ward