

JUDICIAL REMEDIES

CHAPTER 223

S. B. No. 255
(Longmire)

CONTRIBUTION AMONG TORTFEASORS

AN ACT

Relating to contribution among tortfeasors, providing for release of tortfeasors, procedure enabling recovery of contribution, and making uniform the law with reference thereto, and providing a savings clause.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Right To Contribution.)

(a) Except as otherwise provided in this Act, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally (willfully or wantonly) caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This Act does not impair any right or indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(g) This Act shall not apply to breaches of trust or of other fiduciary obligation.

§ 2. Pro Rata Shares.) In determining the pro rata shares of tortfeasors in the entire liability (a) their relative degrees of fault shall not be considered; (b) if equity requires the collective liability of some as a group shall constitute a single share; and (c) principles of equity applicable to contribution generally shall apply.

§ 3. Enforcement.)

(a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right of contribution is barred unless he has either (1) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within one year after payment, or (2) agreed while action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or

wrongful death shall be binding as among such defendants in determining their right to contribution.

§ 4. **Release Or Covenant Not To Sue.)** When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and,

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

§ 5. **Constitutionality.)** If any section, subdivision, sentence or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Act.

Approved March 11, 1957.

CHAPTER 224

H. B. No. 556
(Muggli)

PARENTAL RESPONSIBILITY FOR MINORS

AN ACT

To authorize the recovery of civil damages due to the malicious or willful destruction of property by minors.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Parental Responsibility For Minor Children.)** Any municipal corporation, county, township, village, school district, or department of the state of North Dakota, or any person, partnership, corporation, association, or religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in a civil action in an amount not to exceed three hundred dollars in a court of competent jurisdiction from the parents of any minor under the age of 18 years, living with a parent, who shall maliciously or willfully destroy property, real, personal or mixed, belonging to

such municipal corporation, county, township, village, school district, or department of the state of North Dakota, or person, partnership, corporation, association or religious organization.

§ 2. Recovery Limitations.) Recovery shall be limited to actual damages in an amount not to exceed three hundred dollars, in addition to taxable court costs.

Approved March 14, 1957.

CHAPTER 225

H. B. No. 762
(Muggli)

PUBLIC CORPORATIONS BOUND BY CONDEMNATION DECREE

AN ACT

To amend and reenact section 32-1528 of the North Dakota Revised Code of 1943 relating to public corporations bound by decisions in condemnation proceedings.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 32-1528 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

32-1528. Public Corporation Bound By Judgment.) In the event that any property is being acquired by any public corporation through condemnation proceedings, such public corporation shall be bound by the judgment rendered therein and within six months after the entry of such a judgment shall pay into court the full amount of the judgment on account of damages. If the public corporation shall dismiss the action prior to the entry of judgment thereon, the court shall award to the defendant reasonable actual or statutory costs or both, which shall include reasonable attorneys fees.

Approved March 16, 1957.

CHAPTER 226

H. B. No. 676
(Muggli)

TRIAL COSTS

AN ACT

To amend and reenact section 32-1532 of the North Dakota Revised Code of 1943 relating to costs on trial.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 32-1532 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

32-1532. Costs.) The court may in its discretion award to the defendant reasonable actual or statutory costs or both which may include reasonable attorney's fees. In all cases when a new trial has been granted upon the application of the defendant and he has failed upon such trial to obtain greater compensation than was allowed him upon the first trial, the costs of such new trial shall be taxed against him.

Approved March 19, 1957.