

JUDICIAL PROCEDURE, CIVIL

RULES OF COURT

CHAPTER 308

SENATE BILL NO. 2448
(Longmire, Chesrown)

CONFERRING JURISDICTION BY AGREEMENT OF THE PARTIES

AN ACT to state the circumstances in which a court should exercise jurisdiction which has been granted it by the defendant's consent, or should refrain from exercising existing jurisdiction because of an agreement by the parties that suit should be brought in another state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) As used in this Act, "state" means any foreign nation, and any state, district, commonwealth, territory or insular possession of the United States.

SECTION 2. ACTION IN THIS STATE BY AGREEMENT.)

1. If the parties have agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state will entertain the action if
 - a. The court has power under the law of this state to entertain the action;
 - b. This state is a reasonably convenient place for the trial of the action;
 - c. The agreement as to the place of the action was not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means; and
 - d. The defendant, if within the state, was served as required by law of this state in the case of persons within the state or, if without the state, was served either personally or by registered or certified mail directed to his last known address.
2. This section does not apply to cognovit clauses, to arbitration clauses, or to the appointment of an agent for the service of process pursuant to statute, rule, or court order.

SECTION 3. ACTION IN ANOTHER PLACE BY AGREEMENT.) If the parties have agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court will dismiss or stay the action, as appropriate, unless

1. The court is required by statute to entertain the action;
2. The plaintiff cannot secure effective relief in the other state, for reasons other than delay in bringing the action;
3. The other state would be a substantially less convenient place for the trial of the action than this state;
4. The agreement as to the place of the action was obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means; or
5. It would for some other reason be unfair or unreasonable to enforce the agreement.

Approved March 27, 1971

CHAPTER 309

SENATE BILL NO. 2219
(Stroup, Freed)

CANCELLATION OF LIS PENDENS

AN ACT to amend and reenact section 28-05-08 of the North Dakota Century Code, relating to the cancellation of lis pendens by the entry of a final judgment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 28-05-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-05-08. CANCELLATION OF LIS PENDENS.) The court in which the action was commenced, at any time, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, may order the notice authorized by section 28-05-07 to be canceled of record in whole or in part by the register of deeds of any county in whose office the same may have been filed for record, and such cancellation shall be made by an endorsement to that effect on the margin of the record which shall refer to the order. Such cancellation, in like manner, may be made by the register of deeds upon a written request, directing such cancellation, signed by the party or the attorney of the party who caused such notice to be filed. Such notice shall also be canceled by the entry of a final judgment in the action if no appeal has been taken from such judgment within the time provided by law.

Approved March 17, 1971

CHAPTER 310

HOUSE BILL NO. 1073
(Jenkins, Metzger, Olienyk, Sandness)
(From Legislative Council Study)

SERVICE OF PROCESS
ON UNITED STATES

AN ACT to create and enact chapter 28-06.2 of the North Dakota Century Code, relating to the method of service of civil process upon the United States, an officer, employee, or agency thereof, when civil suit is brought in a state court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 28-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

28-06.2-01. PROCESS SERVED UPON THE UNITED STATES - PERSONS DESIGNATED TO RECEIVE SUMMONS AND COMPLAINT.) Service shall be made upon the United States by any person authorized to make service under state law or the rules of civil procedure by delivering a copy of the summons and of the complaint to the United States attorney for the federal judicial district in which the action is brought, or to an assistant United States attorney in that district, or to a clerical employee designated by the United States attorney, and by sending a copy of the summons and of the complaint by certified mail to the attorney general of the United States, at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by certified mail to such officer or agency.

28-06.2-02. SERVICE UPON OFFICER, EMPLOYEE, AGENCY, OR GOVERNMENT CORPORATION OF THE UNITED STATES.) Service upon an officer, employee, or agency of the United States shall be made by serving the United States, and by delivering a copy of the summons and of the complaint to such officer, employee, or agency. If the agency being sued is a government corporation, a copy of the summons and of the complaint shall be served in the manner service is authorized by state law or the rules of civil procedure for service on a domestic corporation.

28-06.2-03. ANSWER BY UNITED STATES - TIME LIMITATION.) The United States, or an officer, employee, or agency thereof, shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty days after service upon the United States attorney of the pleading in which the claim is asserted.

28-06.2-04. SERVICE UPON OFFICER OR EMPLOYEE ACTING UNDER COLOR OF FEDERAL EMPLOYMENT.) The provisions of sections 28-06.2-02 and 28-06.2-03 shall apply to any action seeking relief against an officer or employee of the United States for any act done under the color of his office or employment.

28-06.2-05. PROCEDURES GOVERNING OTHER MATTERS REMAIN THE SAME.) Except as otherwise provided in this chapter, or by express provision of other law, procedures governing suits against the United States, or any of its agencies, officers, or employees acting in their official capacities, shall be those governing similar suits to which the United States, or an agency, officer, or employee, is not a party.

Approved February 20, 1971

CHAPTER 311

SENATE BILL NO. 2252
(Chesrown, Freed, Holand)

NEWMAN ACT REPEAL

AN ACT to amend and reenact section 28-18-09 of the North Dakota Century Code, and to repeal section 28-27-32 of the North Dakota Century Code, relating to appeals to the North Dakota supreme court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 28-18-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-18-09. SPECIFICATIONS OF ERRORS AND INSUFFICIENCY OF THE EVIDENCE.) A party desiring to make a motion for a new trial or to appeal from a judgment or other determination of a district court or county court with increased jurisdiction shall serve with the notice of motion, or notice of appeal, a concise statement of the errors of law he complains of, and if he claims the evidence is insufficient to support the verdict or that the evidence is of such character that the verdict should be set aside as a matter of discretion, he shall so specify. A specification of insufficiency of the evidence to sustain the verdict or decision of the court shall point out wherein the evidence is insufficient and it shall be proper to include in such specification, specifications of facts conclusively established, together with the facts claimed not to be established, in such manner as to show intelligibly wherein, on the whole case, the verdict or decision is not supported by the evidence.

SECTION 2. REPEAL.) Section 28-27-32 of the North Dakota Century Code is hereby repealed.

Approved March 18, 1971

CHAPTER 312

HOUSE BILL NO. 1357
(Atkinson)

UNDERTAKING NOT REQUIRED
OF CERTAIN APPELLANTS

AN ACT relating to appeals by the state, or any state officer, or state board, or any public corporation, or any municipal corporation, and providing that no undertaking need be given, unless ordered by the supreme court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. FROM WHOM UNDERTAKING NOT REQUIRED UNLESS ORDERED BY COURT.) When the state, or any state officer, or state board, in a purely official capacity, or any public corporation, or any municipal corporation within the state, shall take an appeal, service of the notice of appeal shall perfect the appeal and stay the execution or performance of the judgment or order appealed from and no undertaking need be given, but the supreme court on motion may require sureties to be given in such form and manner as it shall prescribe as a condition of the further prosecution of the appeal.

Approved March 12, 1971

CHAPTER 313

SENATE BILL NO. 2355
(Nething, Freed)

ADMINISTRATIVE PROCEDURES -
SPECIFICATION OF ISSUES

AN ACT to amend and reenact section 28-32-08 of the North Dakota Century Code, relating to specifications of any issues to be furnished by agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 28-32-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-08. SPECIFICATIONS OF ANY ISSUES TO BE FURNISHED BY AGENCY.) Whenever an administrative agency, pursuant to authority conferred upon it by law, shall institute an investigation upon its own motion or without the filing of a specified complaint, or shall hold any hearing or make any independent investigation upon the claim or request of any person, no decision shall be made by the agency until all parties in interest shall have been furnished with a written specification of the issues which are to be considered and determined, nor until an opportunity shall have been afforded to such parties to present evidence and to be heard upon the precise issues so specified. Provided, however, that the commissioners of the workmen's compensation bureau may make determinations without the giving of the notice herein provided for. This provision shall not be construed to relieve the commissioners of the workmen's compensation bureau of the requirements of section 28-32-13 of this chapter.

Approved March 17, 1971