

JUDICIAL PROCEDURE, CIVIL

CHAPTER 279

HOUSE BILL NO. 1464
(Richie)

STATUTE OF LIMITATION FOR MECHANIC'S LIEN

AN ACT to amend and reenact sections 28-01-16 and 28-01-17 of the North Dakota Century Code, relating to the time for commencing a cause of action for a mechanic's lien.

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

SECTION 1. AMENDMENT.) Section 28-01-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-16. ACTIONS HAVING SIX-YEAR LIMITATIONS.) The following actions must be commenced within six years after the cause of action has accrued:

1. An action upon a contract, obligation, or liability, express or implied, subject to the provisions of sections 28-01-15 and 41-02-104.
2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.
3. An action for trespass upon real property.
4. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.
5. An action for criminal conversation or for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided.
6. An action for relief on the ground of fraud in all cases both at law and in equity, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

SECTION 2. AMENDMENT.) Section 28-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-17. ACTIONS HAVING THREE-YEAR LIMITATIONS - EXCEPTIONS.)

The following actions must be commenced within three years after the cause of action has accrued:

1. An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection shall not apply to an action for an escape.
2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.
3. An action for the foreclosure of a mechanic's lien.

Approved March 19, 1977

CHAPTER 280

HOUSE BILL NO. 1367
(Conmy)

JURY SIZE IN CIVIL ACTIONS

AN ACT to create and enact a new section to chapter 28-14 of the North Dakota Century Code, relating to the size of juries in civil cases.

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

SECTION 1.) A new section to chapter 28-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

SIZE OF JURIES IN CIVIL CASES.) In all civil actions when a jury is empaneled, a jury shall consist of six qualified jurors unless any party makes a timely written demand for a jury of twelve.

Approved March 12, 1977

CHAPTER 281

HOUSE BILL NO. 1578
(Conmy)

CANCELLATION OF JUDGMENTS AGAINST
BANKRUPTS

AN ACT to amend and reenact section 28-20-30 of the North Dakota Century Code, relating to the procedure for cancellation of judgments against bankrupts.

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

SECTION 1. AMENDMENT.) Section 28-20-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-30. CANCELLATION OF JUDGMENT AGAINST BANKRUPTS - PROCEDURE.) Any person discharged from his debts pursuant to the act of the Congress of the United States known as "an Act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898", and acts amendatory thereof, at any time after obtaining such discharge in bankruptcy, may file in the office of the clerk of any court of record in which a judgment shall have been rendered, or a transcript thereof filed against him, a certified copy of such discharge in bankruptcy, and the clerk of such court shall thereupon expunge such judgment from the record as of the date of filing the original petition in bankruptcy, which shall have the effect of a satisfaction of the judgment from and after that date so that it cannot attach as a lien on any property subsequently acquired by the bankrupt and shall be removed as a cloud upon the homestead set aside to the bankrupt.

Approved March 19, 1977

CHAPTER 282

SENATE BILL NO. 2516
(Freed, Schirado)

JUDGMENT EXEMPTIONS

AN ACT to amend and reenact sections 28-22-03, 28-22-04, and 28-22-05 of the North Dakota Century Code, relating to additional exemptions, specific alternative exemptions, and exemptions of a single person.

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

SECTION 1. AMENDMENT.) Section 28-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03. ADDITIONAL EXEMPTIONS.) In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by his agent, may select from his other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of five thousand dollars, which also shall be exempt.

SECTION 2. AMENDMENT.) Section 28-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-04. SPECIFIC ALTERNATIVE EXEMPTIONS.) Instead of the exemption granted in section 28-22-03, the head of the family may select and choose the following property, which then shall be exempt:

1. All miscellaneous books and musical instruments for the use of the family not exceeding one thousand five hundred dollars in value;
2. All household and kitchen furniture, including beds, bedsteads, and bedding used by the debtor and his family, not exceeding one thousand dollars in value, and in case the debtor shall own more than five hundred dollars worth of such property, he must select therefrom such articles to the value of one thousand dollars leaving the remainder subject to legal process;
3. Livestock and farm implements not exceeding four thousand five hundred dollars in value; and
4. The tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto stock in trade not exceeding one thousand dollars in value. The

library and instruments of any professional person not exceeding one thousand dollars in value.

SECTION 3. AMENDMENT.) Section 28-22-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-05. EXEMPTIONS OF A SINGLE PERSON.) A single person, in person or by his agent, in addition to his wearing apparel, may select from his other personal property, goods, chattels, merchandise, money, or other personal property not exceeding in value the sum of one thousand five hundred dollars, which shall be exempt.

Approved April 6, 1977

CHAPTER 283

HOUSE BILL NO. 1079
(Rylance)

AWARD OF COSTS AND ATTORNEY'S FEES

AN ACT to amend section 28-26-01 of the North Dakota Century Code, relating to the awarding of costs and attorney's fees to the prevailing party in a civil case.

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

SECTION 1. AMENDMENT.) Section 28-26-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-01. ATTORNEY'S FEES BY AGREEMENT - EXCEPTIONS - AWARDING OF COSTS AND ATTORNEY'S FEES TO PREVAILING PARTY.)

1. Except as provided in subsection 2, the amount of fees of attorneys in civil actions must be left to the agreement, express or implied, of the parties.
2. In civil actions the court may, in its discretion, upon a finding that the pleading was frivolous, award reasonable actual or statutory costs, or both, including reasonable attorney's fees to the prevailing party.

Approved March 17, 1977

CHAPTER 284

HOUSE BILL NO. 1063
(Legislative Council)
(Interim Committee on Judiciary "C")

ADMINISTRATIVE AGENCIES PRACTICE ACT

AN ACT to create and enact section 28-32-02.1 of the North Dakota Century Code, relating to adopting a rule describing an agency's organization and functions; and to amend and reenact sections 28-32-01, 28-32-05, 28-32-09, 28-32-12, 28-32-21 of the North Dakota Century Code, relating to definitions, rules of procedure and notice of hearing, depositions and interrogatories, methods of recording testimony, and supreme court review.

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

SECTION 1. AMENDMENT.) Section 28-32-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-01. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise provides:

1. "Administrative agency" or "the agency" includes any officer, board, commission, bureau, department, or tribunal other than a court, having statewide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state.
2. "Rules and regulations" include rules, regulations, orders, and amendments thereto, of general application, issued by any officer, board, commission, bureau, or department interpreting, regulating the application of, or regulating the procedure under, the statutes which they are charged respectively with administering. Such term shall not apply to rules or regulations adopted or orders made by an administrative agency relating solely to the internal operation of the agency, nor to rules or regulations adopted or orders made relating to the management, admission, expulsion, or graduation of students from educational institutions, nor to rules or regulations adopted or orders made relating to the management, confinement,

- discipline, or release of inmates of any penal or charitable institution.
3. "Person" includes an individual, association, partnership, corporation, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
 4. "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.
 5. "Party" means each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
 6. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-05; and any administrative agency which, when authorized by law, files such a complaint before such agency or any other agency.

SECTION 2.) Section 28-32-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

28-32-02.1. PUBLIC INFORMATION - ADOPTION OF DESCRIPTION OF ORGANIZATION AND FUNCTIONS.) In addition to other rulemaking requirements imposed by law, each agency shall include in its rules a description of that portion of its organization and functions subject to chapter 28-32, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

SECTION 3. AMENDMENT.) Section 28-32-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-05. RULES OF PROCEDURE - COMPLAINT - NOTICE OF HEARING - FILING AND SERVICE.) The following rules of procedure shall be observed by all administrative agencies in proceedings in which the same are applicable:

1. The complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of a proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.
2. Upon filing of the complaint, the appropriate administrative agency shall serve a copy of the complaint and a notice for hearing upon the respondent personally or by certified mail, as the agency may direct, at least forty-five days before the time specified for hearing. Service may be waived in writing by the respondent, or the parties

may agree upon a definite time and place for hearing with the consent of the agency having jurisdiction.

3. The notice for hearing shall fix the time and place for trial upon the merits, and shall inform the respondent that an answer to the complaint must be served upon the complainant and agency giving the notice within twenty days after service of the complaint and notice for hearing, or the complaint will be deemed admitted, and the agency will enter such order as the facts and law may warrant.
4. In an emergency the agency, in its discretion, may notice a proceeding for hearing upon the merits upon less than forty-five days' notice. Every party to such proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
5. At the hearing, the respondent shall be afforded the same opportunity to present evidence and to examine and cross-examine witnesses as is permitted under section 28-32-06.
6. Unless otherwise precluded by law, informal disposition may be made of any contested case, or any issue therein, by stipulation, agreed settlement, consent order, or default subject to agency approval.
7. If the nature of the action does not involve a complaint and specific-named respondents, the above rules shall not apply and public notice of the hearing shall be given at least fourteen days prior to the hearing by publication in the official newspaper in the county or counties in which the subject matter involved is located.

SECTION 4. AMENDMENT.) Section 28-32-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-09. SUBPOENA AND ATTENDANCE OF WITNESSES.) Any officer, examiner, chairman, or acting chairman of any administrative agency, upon request of any party to a hearing conducted by it, or upon his own motion on behalf of the agency, shall require by subpoena the attendance and testimony of witnesses and the production of the documents and other objects described in such subpoena at such hearing or proceeding, and the cost of serving such subpoena shall be paid by the person or agency requesting it. A subpoena to compel a witness to produce documentary evidence will be issued to a party other than the agency only upon petition showing general relevance and reasonable scope of the evidence sought, which petition must also specify with particularity the books, papers, or documents desired. The deposition of a witness or party in any proceeding before an agency may be taken in the same manner and on the same notice as in a civil action pending in the district court. Interrogatories may be sent to any witness or party in any proceeding in

the same manner and on the same notice as in an action pending in the district court. A party, other than the administrative agency, must first show good cause before undertaking discovery proceedings, including interrogatories. Any witness who is subpoenaed under the provisions of this section and who appears at the hearing, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court, and such fees shall be paid by the party or agency at whose instance the witness appears or his deposition is taken.

SECTION 5. AMENDMENT.) Section 28-32-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-12. RECORD TO BE MADE OF TESTIMONY.) A record shall be made of all testimony adduced at any hearing before an administrative agency. Such testimony may be taken by a court reporter, by a stenographer, or by use of an electronic recording device. All evidence and exhibits produced at any hearing before the administrative agency shall be filed with the agency concerned. A transcript of the evidence taken by or before an administrative agency shall be furnished to any party to the proceeding, upon written request therefor, at a uniform charge to be set by the agency, and such transcript fee shall be paid into the general fund.

SECTION 6. AMENDMENT.) Section 28-32-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-21. REVIEW IN SUPREME COURT.) The judgment of the district court in an appeal from a decision of an administrative agency may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-19, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court.

Approved March 31, 1977

CHAPTER 285

HOUSE BILL NO. 1064
(Legislative Council)
(Interim Committee on Judiciary "C")

ADMINISTRATIVE AGENCY RULEMAKING POWER

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to the rulemaking power of an administrative agency, and providing for public opportunity to submit data, views, and arguments and for required oral hearings.

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

SECTION 1. AMENDMENT.) Section 28-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-02. RULEMAKING POWER OF AGENCY.) Every administrative agency shall have the authority to promulgate, and from time to time to amend or repeal, reasonable rules and regulations in conformity with the provisions of any statute administered or to be administered, enforced or to be enforced, by such agency, and to prescribe methods and procedure required in connection therewith. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

1. Adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested. The agency shall consider fully all written and oral submissions respecting the proposed rule.
2. Every rule or regulation proposed by any administrative agency shall be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion.

Approved March 11, 1977

CHAPTER 286

SENATE BILL NO. 2476
(Melland)

ADMINISTRATIVE CODE PUBLICATION

AN ACT to create and enact sections 28-32-03.1 and 28-32-03.2 of the North Dakota Century Code, providing for an administrative code and code supplement, printing, distribution, and sales; to amend and reenact section 28-32-03 of the North Dakota Century Code, relating to the filing and effect of rules and regulations; and providing an appropriation.

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

SECTION 1. AMENDMENT.) Section 28-32-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03. FILING OF RULES AND REGULATIONS - EFFECT OF RULES.)

1. A copy of each rule and regulation promulgated and adopted by an administrative agency shall be filed in the office of the attorney general, and when filed, shall have the force and effect of law until amended or repealed by the agency or until the same is declared invalid by a final court decision. A copy of each rule and regulation adopted by any administrative agency, and the attorney general's opinion thereon, shall also be filed in the office of the legislative council prior to final printing or duplication by an agency. Each administrative agency extensively amending or revising its rules and regulations after the effective date of this Act, as determined by the office of the legislative council, shall submit such rules and regulations in the proper format, style, and arrangement prescribed under subsection 3 for publication in the North Dakota administrative code. Extensive amendments or revisions of administrative rules and regulations shall be published in the administrative code by the office of the legislative council as soon as practicable after submission by an agency. Prior to July 1, 1978, all administrative agencies shall revise their rules and regulations not previously published in the administrative code for publication in the administrative code. After July 1, 1978, rules and regulations not published in the administrative code shall be invalid.

2. Rules and regulations approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council at the time of or after initial publication of the code shall become effective ten days after publication as provided for in section 28-32-03.1, except that:
 - a. If a later date is required by statute or specified in the rule, the later date shall be the effective date.
 - b. Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon approval by the attorney general, or at a stated date less than ten days following publication in the code or code supplement, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefore shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them. Emergency rules shall have the force and effect of law. Upon becoming effective, rules and regulations shall have the force and effect of law until amended or repealed by the agency or declared invalid by a final court decision.
3. The office of the legislative council may prescribe a format, style, and arrangement for rules and regulations which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules and regulations for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, and punctuation of the rules and regulations as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which shall be open to public inspection during office hours, and shall provide copies of any rule upon the request of any person or agency. Unless otherwise provided by statute, the office of the legislative council may require the payment of the cost of providing such copies.

SECTION 2.) Section 28-32-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

28-32-03.1. ADMINISTRATIVE CODE AND CODE SUPPLEMENT.)

1. The office of the legislative council shall, as soon as practicable after the effective date of this Act, compile, index, and publish all rules and regulations filed pursuant to this Act in a publication which shall

be known as the North Dakota administrative code, herein referred to as the code. The code shall be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise the code, or any part thereof, as often as the legislative council deems necessary.

2. The office of the legislative council shall compile and publish the North Dakota administrative code supplement, herein referred to as the code supplement, each month that rules and regulations are submitted to the office of the legislative council for publication.
 - a. The code supplement shall contain all rules filed with the office of the legislative council since the compilation and publication of the preceding issue of the code supplement. The office of the legislative council may establish a due date by which rules and regulations must be submitted by an agency for publication during any month.
 - b. The code supplement shall be printed or duplicated in the same style as the code shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
3. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
4. The code shall be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the office of the legislative council for the printing of as many copies of such separate portions of the code as it may require. The cost of any such separate portions shall be paid by the agency.

SECTION 3.) Section 28-32-03.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

28-32-03.2. PRINTING, SALES, AND DISTRIBUTION OF CODE AND CODE SUPPLEMENT.)

1. The secretary of state shall distribute the code and code supplement, and shall distribute copies of the code, revisions thereto, and the code supplement without charge to the following:

- a. Attorney general, one copy.
 - b. Each supreme court judge, one copy.
 - c. Each district court judge, one copy.
 - d. Each county auditor of this state, for the use of county officials and the public, one copy.
 - e. Supreme court library, one copy.
 - f. State library, one copy.
 - g. Law library of the university of North Dakota, one copy.
 - h. Secretary of state, one copy.
 - i. North Dakota legislative council, one copy.
2. The office of the legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, and the university of North Dakota law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the code supplement.
 3. The secretary of state shall make copies of and subscriptions to the code, revisions thereto, and the code supplement available to any person at prices fixed to cover publication and distribution costs.
 4. The office of the legislative council shall determine the cost of supplying copies of the code, revisions thereto, and the code supplement. Such cost shall be the approximate cost of printing or duplicating and distributing. However, a uniform price per page or group of pages may be established without regard to differences in the cost of printing different parts of the code, revisions thereto, and the code supplement.
 5. All fees collected by the secretary of state shall be deposited in the general fund of the state treasury.
 6. The administrative code, revisions thereto, and the code supplement shall be considered sixth class printing under sections 46-02-04 and 46-02-09.

SECTION 4. APPROPRIATION.) There is hereby appropriated out of the general fund in the state treasury to the office of the legislative council the sum of \$70,050.00, or so much thereof as may be necessary, for carrying out the provisions of this Act during the biennium beginning July 1, 1977, and ending June 30, 1979.

Approved April 21, 1977

CHAPTER 287

HOUSE BILL NO. 1062
(Legislative Council)
(Interim Committee on Judiciary "C")

APPEAL FROM ADMINISTRATIVE AGENCY DETERMINATION

AN ACT to amend and reenact section 28-32-19 of the North Dakota Century Code, relating to scope of and procedure on appeal from administrative agency determinations.

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

SECTION 1. AMENDMENT.) Section 28-32-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-19. SCOPE OF AND PROCEDURE ON APPEAL FROM DETERMINATION OF ADMINISTRATIVE AGENCY.) The court shall try and hear an appeal from the determination of an administrative agency without a jury and the evidence considered by the court shall be confined to the record filed with the court. If additional testimony is taken by the administrative agency or if additional findings of fact, conclusions of law, or a new decision shall be filed pursuant to section 28-32-18, such evidence, findings, conclusions, and decision shall constitute a part of the record filed with the court. After such hearing, the court shall affirm the decision of the agency unless it shall find that any of the following are present:

1. The decision or determination is not in accordance with the law.
2. The decision is in violation of the constitutional rights of the appellant.
3. Provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions and decision of the agency are not supported by its findings of fact.

If the decision of the agency is not affirmed by the court, it shall be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the decision of the court.

Approved March 12, 1977