

# JUDICIAL REMEDIES

## CHAPTER 300

SENATE BILL NO. 2197  
(Freed)

### AWARD OF INTEREST AND EXEMPLARY DAMAGES

AN ACT to amend and reenact sections 32-03-05 and 32-03-07 of the North Dakota Century Code, relating to the awarding of interest and exemplary damages.

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

SECTION 1. AMENDMENT.) Section 32-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-03-05. WHEN INTEREST IN DISCRETION OF COURT OR JURY.) In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given in the discretion of the court or jury.

SECTION 2. AMENDMENT.) Section 32-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-03-07. WHEN COURT OR JURY MAY GIVE EXEMPLARY DAMAGES.) In any action for the breach of an obligation not arising from contract, when the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant.

Approved March 23, 1977

## CHAPTER 301

SENATE BILL NO. 2517  
(Freed)

## PREJUDGMENT ATTACHMENT

AN ACT to establish procedures for the prejudgment remedy of attachment; and to repeal chapter 32-08 of the North Dakota Century Code, relating to the present procedures of attachment.

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

SECTION 1. ATTACHMENT AVAILABILITY.) Any creditor may attach the property of his debtor, in the cases, upon the conditions, and in the manner prescribed in this chapter.

SECTION 2. WRIT - FORM AND CONTENTS.) The writ of attachment shall be issued on the request of the plaintiff at any time before final judgment and after a summons and a complaint is filed. It shall be directed to the sheriff of some county in which the property of the defendant is supposed to be, and shall require him to attach all the property of the defendant within his county or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses. It shall be in the name of the court and be sealed with its seal and signed by its judge.

SECTION 3. BASIS FOR ATTACHMENT.)

1. Before any writ of attachment shall be executed the plaintiff or someone on his behalf shall make and attach thereto an affidavit stating that the defendant is indebted to the plaintiff in a sum exceeding fifty dollars specifying the amount above all setoffs, and that the same is due upon contract or upon a judgment and that the affiant knows or has good reason to believe either:
  - a. The defendant is absent from this state, or is concealed therein so that summons cannot be served on him;
  - b. The defendant has disposed of or concealed or is about to dispose of or conceal his property or some part thereof with intent to defraud his creditors;

- c. The defendant has removed or is about to remove property out of this state with intent to defraud his creditors;
  - d. The defendant fraudulently incurred the obligation respecting which the action is brought;
  - e. The defendant is not a resident of this state;
  - f. The defendant is a foreign corporation; or if domestic that no officer or agent thereof on whom to serve the summons exists or resides in this state or can be found;
  - g. The action is against a defendant as principal on an official bond to recover money due the state or to some political subdivision thereof, or that the action is against the defendant as principal upon a bond or other instrument given as evidence of debt for or to secure the payment of money embezzled or misappropriated by such defendant as an officer of the state or of a political subdivision thereof;
  - h. The action is against a defendant to recover purchase money for personal property sold to the defendant, in which case the property must be specifically described, if one of the conditions under subdivision a, e, or i and one of the conditions under subdivision b or c is also alleged;
  - i. The defendant is about to remove his residence from the county where he resides with the intention of permanently changing the same, and fails or neglects on demand to give security for the debt upon which the action is commenced; or
  - j. The action is against the owner of any motor vehicle for damages alleged to have been caused by the negligence of such owner or his duly authorized agent, the motor vehicle alleged to have been driven, occupied, or owned by a negligent driver or owner thereof, at the time of such accident, may be attached, if one of the conditions under subdivision a or e and one of the conditions under subdivision b or c is also alleged.
2. In tort actions the affidavit shall state that a cause of action in tort exists in favor of the plaintiff and against the defendant, that the damages sustained exceed fifty dollars specifying the amount claimed and either:
    - a. The defendant is not a resident of this state; or that his residence is unknown and cannot with due diligence be ascertained; or

- b. The defendant is a foreign corporation.
3. An action may be maintained and a writ of attachment issued on a demand not yet due in any case mentioned in this section, except the cases mentioned in subdivision e, f, or g of subsection 1 and the same proceedings in the action shall be had and the same affidavit shall be required as in actions upon matured demands except that the affidavit shall state that the debt is to become due. The bond specified in section 5 shall be for three times the amount demanded. In case an attachment is issued before the maturity of the debt and a defense to such attachment is sustained the court shall render a judgment for damages and costs against the plaintiff.

SECTION 4. AMENDMENT TO AFFIDAVIT.) The affidavit required by section 3 may be amended at any time before the trial by the substitution of a new affidavit containing allegations of facts existing at the time of making the former affidavit.

SECTION 5. BOND - JUSTIFICATION.) Before the writ of attachment shall be executed, a bond on the part of the plaintiff in the sum of at least five hundred dollars executed by sufficient surety shall be delivered to the officer, to the effect that if the defendant recover judgment the plaintiff shall pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment. The affidavit of the surety annexed to such bond shall state that he is a resident of this state and worth double the sum specified in the bond in property therein above his debts and exclusive of property exempt from execution. No bond is necessary when this state or any political subdivision thereof is plaintiff.

SECTION 6. ADDITIONAL SECURITY.) In case the defendant is not satisfied with the amount specified in the bond or with the surety he may, upon five days' notice to the plaintiff, apply to a judge for additional security and such judge may require the plaintiff to give and file another bond, to be approved by him, in such sum as he shall deem proper, not exceeding the appraised value of the property attached. The surety shall justify as provided in section 5; but if there be more than one surety they may be accepted if they are jointly responsible for the required sum.

SECTION 7. OFFICER'S RETURN - ACTION ON BOND.) The officer executing the writ shall return thereon all his proceedings and within ten days from receipt of the bond shall file the writ, affidavit, and bond with the clerk of the court.

SECTION 8. DIRECTIONS TO SHERIFF - SEVERAL WRITS - LIMITATIONS ON SEIZURE.)

1. The sheriff shall without delay serve copies of the writ, affidavit, and bond upon the defendant in the same manner

- as the summons. In the case of a nonresident or a foreign corporation, the sheriff shall serve such copies on any agent of such defendant in the county, if any be known to him. He shall cause all real and personal property or so much thereof as shall satisfy the writ to be appraised by two disinterested residents of the county, who shall be first sworn by him to make a true appraisal, which appraisal shall be signed by them, and the appraisal and inventory shall be returned with the writ. Copies of the appraisal and inventory shall be served upon the defendant.
2. If two or more writs against the same defendant shall be executed on the same property, an inventory and appraisal shall be made in but one of the actions, and the sheriff shall endorse on the copy served upon the defendant in the other action a notice that the property attached is the property attached in the action in which the inventory and appraisal are made, giving the title of such action; and such officer shall state in his return the fact of such endorsement.
  3. If the defendant has not filed a special answer, pursuant to section 17, within ten days after notice of the issuance of a writ of attachment, the sheriff shall seize, in his county, so much of the property of the defendant as will satisfy the demand of the plaintiff with costs and expenses. The sheriff shall attach real property and perishable property without delay, notwithstanding the right of the defendant to file a special answer.

SECTION 9. ATTACHMENT OF REAL ESTATE.) To attach real estate the sheriff shall file in the office of the register of deeds a copy of the writ with his certificate that by virtue of the original writ he has attached all the interest of the named defendant in such real estate, describing the same.

SECTION 10. WHAT MAY BE ATTACHED - HOW ATTACHED.) All the property of the defendant, not exempt from execution, may be attached. Personal property shall be attached as upon an execution and the provisions respecting the levy of an execution thereon shall be applicable to an attachment.

SECTION 11. INDEMNITY TO SHERIFF.) If there is reasonable doubt as to the ownership of the property or as to its liability to be attached, the sheriff may require sufficient security from the plaintiff to indemnify him for attaching such property.

SECTION 12. SALE OF PERISHABLE PROPERTY ATTACHED OR GARNISHED.) When any property taken on a writ of attachment is likely to depreciate in value before the end of the action or the keeping thereof could cause much loss or expense, the court or a judge may order it sold in such manner as the best interests of the parties demand, and the money realized shall be held by the sheriff in lieu of the property sold.

SECTION 13. CARE OF PROPERTY - COLLECTION OF DEBTS.) The officer shall keep the property seized by him and the proceeds of such as shall have been sold to answer any judgment which may be recovered in such action; and shall, subject to the direction of the court or judge, collect and receive into his possession all the debts, credits, and effects of the defendant. The officer may also take such legal proceedings, either in his own name or in the name of such defendant, as may be necessary for that purpose and discontinue the same at such times and on such terms as the court or judge may direct.

SECTION 14. BOND FOR RELEASE OF PROPERTY - ESTOPPEL.) The defendant may, at any time before judgment, deliver to the officer who attached his property a bond executed by two sureties, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment, with all costs, that may be recovered against such defendant in the action, not exceeding the sum specified in the bond with interest. Such a bond shall be in the amount alleged by the plaintiff to be due. The sureties shall justify as provided in section 5, and may be accepted if they are jointly responsible for the required sum.

SECTION 15. EXCEPTION TO DEFENDANT'S SURETIES - RELEASE OF PROPERTY - COSTS.) The officer shall forthwith give the plaintiff a copy of the bond received pursuant to section 14 with notice of the time when the same was delivered to him. The plaintiff shall, within three days thereafter, give notice to the officer that he objects to the sureties or he waives all objections to them. When the plaintiff objects, the sureties shall justify as provided in section 5. The officer shall be responsible for the sufficiency of such sureties and may retain possession of the attached property until they justify or until the objection is waived. Thereafter, the officer shall deliver the property attached to such defendant. If real estate is attached, the sheriff shall file a certificate of the discharge thereof in the office of the register of deeds. If judgment is for the plaintiff, all his costs and disbursements on the attachment shall be included in the judgment.

SECTION 16. VACATION OR MODIFICATION OF WRIT.) The court may, at any time before the trial of the action or a release of the property under section 15, vacate or modify the writ of attachment for irregularity or other sufficient cause, upon five days' notice of motion. The motion therefor may be combined with a motion to increase the plaintiff's security under section 6.

SECTION 17. ANSWER TO WRIT - TRIAL.) Within ten days after notice of the issuing of a writ of attachment against his property, the defendant may, by special answer, deny the existence, at the time of the making of the attachment affidavit of the material facts stated therein except the alleged liability and the amount thereof, and may assert undue hardship as a defense. The issue so raised shall be tried by the court, before the trial of the action and the affirmative shall be upon the plaintiff. If the defendant has made an assignment for the benefit of his creditors his assignee may answer and defend pursuant to this section.

SECTION 18. TRIAL OR SPECIAL ANSWER.) In making its determination of the issue raised by the special answer, the court shall consider any undue hardship on the defendant that would result from an issuance of the warrant. If the court finds for the defendant, the judge presiding shall tax the defendant's costs of such trial, and an order shall be entered dismissing the writ or that the property attached be delivered to the defendant; and the jury or the court shall, on the trial of the action or thereafter assess the damages sustained by the defendant by reason of the taking and detention or sale of the property attached or by reason of any injury thereto. The same, together with the costs so taxed, shall be a setoff to the plaintiff's demand, and if in excess of it, or the plaintiff fail to recover, the defendant shall have judgment for the amount due. If the court on the trial of such special issue finds for the plaintiff, the presiding judge shall tax the plaintiff's costs of such trial, and the amount so taxed shall, if he recovers, be taxed by the clerk as disbursement in the action. If the defendant or his assignee recover judgment in the action, said costs and the judgment shall be offset.

SECTION 19. DAMAGES - WHEN DEFENDANT TO RECOVER.) If the defendant prevails in the action or if the action be discontinued, he shall have judgment for the damages sustained by him for any damages to his property by reason of the taking and detention or sale thereof.

SECTION 20. RETURN OF PROPERTY - DAMAGES ON DISMISSAL - ENTRY IN REGISTER'S OFFICE.) When the defendant recovers judgment, all the money or property held by any writ of attachment shall be delivered to him, subject to the plaintiff's rights on appeal, and he may maintain an action on the plaintiff's bond for the assessed damages sustained by reason of the writ of attachment. Upon the entry of final judgment in favor of the defendant or on satisfaction of a plaintiff's judgment, the clerk of court shall, if real estate was attached, certify the fact of such judgment or satisfaction, and on filing such certificate with the register of deeds in any county in which attached lands are situated, such register shall enter such certificate upon the records of his office in discharge of such attachments.

SECTION 21. JUDGMENT FOR PLAINTIFF, HOW SATISFIED.) When the plaintiff recovers judgment in the action, the sheriff or officer shall satisfy the same out of the property attached, if sufficient therefor:

1. By paying over to such plaintiff all money attached or received upon sales of property, or upon any debts or credits, or so much thereof as shall be necessary.
2. By selling, under such execution as may be issued on such judgment, so much of the attached property, real or personal, as shall be necessary to satisfy the balance unpaid, according to the provisions regulating sales upon execution, except as provided in subsection 4.

3. If any of the attached property belonging to the defendant is not in the sheriff's hands, without having been sold or converted into money, by repossessing the same, and for that purpose, the sheriff shall have all the authority which he had to seize the same under the writ of attachment. Any person who shall willfully conceal or withhold such property from the sheriff shall be liable to double damages at the suit of the party injured.
4. Until the judgment against the defendant shall be paid, by proceeding to collect the evidences of debt that may have been seized or attached by virtue of the writ of attachment, and to prosecute any bond he may have taken in the course of such proceedings, and apply the proceeds thereof to the payment of the judgment and costs. When the judgment and all costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the property attached, or the proceeds thereof.

SECTION 22. ACTION BY SHERIFF, WHO TO PROSECUTE.) The actions herein authorized to be brought by the sheriff or officer may be prosecuted by the plaintiff or under his direction, upon the delivery by him to the sheriff or officer of an undertaking, with two sufficient sureties, to the effect that the plaintiff will indemnify him for all damages, costs, and expenses thereon not exceeding five hundred dollars in any one action. Such sureties shall, when required by the sheriff or officer, justify by making an affidavit that each is worth double the amount of the penalty named in the undertaking over and above all debts and exemptions.

SECTION 23. EXECUTION AFTER DEFENDANT'S DEATH.) If any defendant whose property is attached shall die and the judgment is in favor of the plaintiff, the property attached shall be applied to the payment of the judgment and execution may be issued on such judgment and satisfied out of the property so attached in the same manner as if such defendant were living.

SECTION 24. STRANGER MAY INTERVENE.) Any person not a party to the action, whose property is attached, may, at any time, either before or after judgment, be made a party upon his application for the purpose of removing or discharging the attachment. The court may grant such summary relief as shall be just, and may in proper cases try appropriate issues by jury.

SECTION 25. REPEAL.) Chapter 32-08 of the North Dakota Century Code is hereby repealed.

Approved April 9, 1977

## CHAPTER 302

SENATE BILL NO. 2091  
(Nothing)

## LIABILITY FOR WILLFUL PROPERTY DAMAGE

AN ACT to provide that persons damaging the property of others be liable for damages and to provide that resulting judgments not be subject to cancellation or discharge in bankruptcy nor subject to the statute of limitations.

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

SECTION 1. 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 his parents 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.

Approved March 23, 1977

## CHAPTER 303

HOUSE BILL NO. 1071  
(Legislative Council)  
(Interim Committee on Political Subdivisions)

## POLITICAL SUBDIVISION LIABILITY

AN ACT to provide for the liability of political subdivisions, to require political subdivisions to be insured to certain limits, to set limitations upon such liability, to provide for the certification of coverage, to authorize the purchase of insurance or provision for self-insurance and to authorize a fund and a levy therefor, to prescribe the duties of the insurance commissioner, to provide a statute of limitations, to provide a procedure for making payments for claims and judgments against political subdivisions, to authorize the state to purchase insurance coverage to reinstate certain causes of action; to amend and reenact section 24-08-03 of the North Dakota Century Code, relating to the limit of county liability for negligence in the supervision and repairs of bridges; and to repeal sections 40-42-01, 40-42-02, 40-42-03, and 40-43-07 of the North Dakota Century Code, relating to claims for injuries on streets, sidewalks, or bridges.

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

SECTION 1. LEGISLATIVE INTENT.) This Act creates additional powers and optional and alternative methods for the single and specific purpose of enabling political subdivisions to pay and to compromise claims and judgments, to issue bonds to fund and satisfy the same, to levy taxes in amounts necessary for such purposes without respect to limitations otherwise existing, and to compromise judgments and make periodic payments on such compromised amount.

SECTION 2. DEFINITIONS.) As used in this Act, unless the context or subject matter otherwise requires:

1. "Claim" means any claim permitted by this Act brought against a political subdivision for an injury caused by a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office.

2. "Commissioner" means the commissioner of insurance.
3. "Employee" means any officer, employee, or servant of a political subdivision, whether elected or appointed and whether or not compensated, but shall not include an independent contractor, or any person performing tasks, the details of which the political subdivision has no right to control.
4. "Injury" means personal injury, death, or property damage. Personal injury includes sickness or disease sustained by any person caused by a political subdivision or an employee thereof. Property damage includes injury to or destruction of tangible property caused by a political subdivision or an employee thereof.
5. "Political subdivision":
  - a. Shall include all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of this state for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this Act.
  - b. Shall not include nor be construed to mean either the state of North Dakota or any of the several agencies, boards, bureaus, commissions, councils, courts, departments, institutions, or offices of government which collectively constitute the government of the state of North Dakota.

### SECTION 3. LIABILITY OF POLITICAL SUBDIVISIONS - LIMITATIONS.)

1. Each political subdivision shall be liable for money damages for injuries when the injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment or office under circumstances where the employee would be personally liable to a claimant in accordance with the laws of this state, or injury caused from some condition or use of tangible property, real or personal, under circumstances where the political subdivision, if a private person, would be liable to the claimant.
2. The liability of political subdivisions under this Act shall be limited to two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence. Liability for punitive or exemplary damages may exceed these limitations when such injuries have been caused by willful or malicious behavior or conduct.

3. A political subdivision shall not be liable for any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved be abused. Specifically, a political subdivision or an employee thereof shall not be liable for any claim which results from:
  - a. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
  - b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
  - c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion be abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.

Nothing contained in this subsection shall be construed to limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

4. The sovereign immunity of the state is not waived in any manner by this Act, and this Act shall not be construed to abrogate the immunity of the state.
5. Nothing contained in this Act shall be construed to obligate political subdivisions for an amount which is more than the limitations upon liability imposed by this Act. Subject to the provisions of this Act, any payments to persons shall constitute payment in full of any compromised claim or judgment or any final judgment under this Act.

SECTION 4. POLITICAL SUBDIVISION TO DEFEND CLAIM AGAINST EMPLOYEE - PERSONAL LIABILITY OF EMPLOYEES - INDEMNIFICATION OF CLAIMS AND FINAL JUDGMENTS.)

1. The governing body of any political subdivision shall defend any claim against an employee thereof where the political subdivision could otherwise be held liable pursuant to subsection 1 of section 3 of this Act. A claim against an employee shall be brought in the same manner as a claim against a political subdivision and shall be subject to the same limitations. In any action against an employee of a political subdivision for an alleged act or omission occurring within the scope of the employee's employment or office, the political subdivision shall be joined as a party to the action, and if there is any question concerning whether the alleged act or omission occurred within the scope of employment or office of the employee, the issue may be tried separately.
2. An employee may be personally liable for money damages for injuries when the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment or office. Employees and political subdivisions may be jointly or severally liable for punitive or exemplary damages. The extent to which an employee may be personally liable pursuant to this section and whether the employee was acting within the scope of employment or office shall be specifically stated in a final judgment.
3. A political subdivision shall indemnify and save harmless an employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment or office of the employee. The indemnification shall be made in the manner provided by this Act and shall be subject to the limitations herein.

SECTION 5. LIABILITY INSURANCE POLICY COVERAGE.) Except for punitive or exemplary damages for which a political subdivision may be held liable, a policy or contract of insurance purchased by a political subdivision pursuant to the provisions of this Act may provide coverage for liabilities established by this Act and may provide such additional coverage as the governing body of the political subdivision determines to be appropriate. The insurer shall not assert the defense of governmental immunity, but this Act confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute shall be tried separately. The insurance coverage authorized by this Act may be in addition to any insurance coverage purchased by a political subdivision pursuant to any other provision of law.

SECTION 6. STATEMENT TO INSURANCE COMMISSIONER.) The insurer under any policy of insurance purchased pursuant to this Act shall certify to the commissioner that the policy is sufficient to provide

coverage to the limitations established by this Act. The statement of certification shall be in a form prescribed by the commissioner, and the commissioner may require policies of insurance purchased by political subdivisions to meet such other specifications as the commissioner determines are necessary to provide coverage to political subdivisions in the manner required by this Act. If premium savings will result therefrom, policies of insurance may be written for a period which exceeds one year with the approval of the commissioner.

SECTION 7. AUTHORIZED INSURANCE.) The insurance authorized by this Act may be provided by:

1. Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes.
2. An insurance company authorized to do business in this state which the commissioner has determined to be responsible and financially sound, considering the extent of the coverage required.
3. Any combination of the methods of obtaining insurance authorized in subsections 1 and 2.
4. Nothing in this Act shall be construed to prohibit a political subdivision from uniting with other political subdivisions in order to purchase liability insurance or to self-insure.

SECTION 8. POLITICAL SUBDIVISION INSURANCE RESERVE FUND - MILL LEVY.)

1. A political subdivision may establish and maintain an insurance reserve fund for insurance purposes and may include in the annual tax levy of the political subdivision such amounts as are determined by the governing body to be necessary for the purposes and uses of the insurance reserve fund. The tax levy provided by this section shall be over and above all other mill levy limitations provided by law but shall not exceed five mills. In the event a political subdivision has no annual tax levy, the political subdivision may appropriate from any unexpended balance in its general fund such amounts as the governing body of the political subdivision shall deem necessary for the purposes and uses of the insurance reserve fund.
2. The fund established pursuant to this section shall be kept separate and apart from all other funds and shall be used only for the payment of claims against the political subdivision which have been settled or compromised or judgments rendered against the political subdivision for injuries arising out of risks established by this Act.

SECTION 9. DUTIES OF INSURANCE COMMISSIONER.) The commissioner shall be responsible for determining the specifications for the liability insurance covering the areas of risk as specified in this Act. The commissioner shall require the insurance company to guarantee that its policy provides minimum coverages pursuant to required specifications. The commissioner may certify to political subdivisions obtaining liability insurance from an insurance company whether such company is responsible and financially sound considering the extent of coverage which the insurance company is offering.

SECTION 10. STATUTE OF LIMITATIONS.) An action brought under this Act must be commenced within three years after the cause of action has accrued.

SECTION 11. JUDGMENT AGAINST POLITICAL SUBDIVISION - ADDITIONAL TAX LEVY.) If a final judgment is obtained against any political subdivision, the governing body of the political subdivision may by resolution provide for the levy and collection of an annual tax upon all the taxable property within the political subdivision for the payment of such judgment. The amount levied under this section for the payment of a judgment against a political subdivision shall not exceed five mills in any one year.

SECTION 12. COMPROMISE OF JUDGMENTS AGAINST POLITICAL SUBDIVISIONS - TAX LEVY TO PAY REDUCED JUDGMENT - TAX LIMITATIONS NOT APPLICABLE.) If a final judgment for the payment of money is entered against a political subdivision and the political subdivision is compelled to pay the judgment by a tax upon all the taxable property in the political subdivision, the governing body, by a resolution adopted by the affirmative vote of two-thirds of its members, may enter into an agreement in the name of the political subdivision with the holder of the judgment for a compromise by a payment of a sum less than the amount of the judgment. If the amount agreed to be paid in compromise of the judgment is at least twenty-five percent less than the unpaid amount of the judgment, the governing body may provide for and levy the tax necessary to pay the reduced judgment in accordance with the terms of the compromise agreement. Limitations upon taxes which may be levied by political subdivisions for the payment of judgments shall not be applicable to taxes levied under this section.

SECTION 13. NEGOTIABLE BEARER BONDS MAY BE ISSUED TO PAY COMPROMISED AMOUNT - REGULATIONS GOVERNING.) The compromised amount of a judgment agreed upon may be made payable in stated annual installments over a period not exceeding twenty-five years and at an annual rate of interest of not more than five percent. The governing body, by a resolution adopted by an affirmative vote of two-thirds of its members, may issue negotiable bearer bonds payable serially and maturing annually, as the parties may agree, and in the amounts of the annual installments and interest determined by the compromise, in satisfaction and discharge of the judgment. Bonds issued under this section shall be delivered to

the judgment creditor upon the release of the judgment and in consideration of the full satisfaction thereof. The bonds shall be executed in the name of the political subdivision by the executive officer and the auditor or fiscal officer thereof. Except as otherwise provided in this Act, the bonds shall be in the form prescribed for political subdivision bonds which are payable from the levy of a general tax. Prior to the delivery of the bonds to the judgment creditor, the bonds shall be registered by the auditor or fiscal officer in the manner provided by the laws of this state for the registration of general obligation bonds of political subdivisions.

SECTION 14. LEVY OF TAX TO PAY PRINCIPAL AND INTEREST OF BONDS - DUTY OF COUNTY AUDITOR.) At the time of the issuance of bonds to be used to compromise a judgment, and before the delivery thereof, the governing body of the political subdivision, by a recorded resolution, shall levy a direct, annual, and irrepealable tax sufficient in amount to pay the principal and interest of the bonds as they severally mature. A copy of the resolution shall be certified to and filed with the county auditor. The county auditor thereupon and annually thereafter shall spread the annual tax provided in the resolution upon the tax list and shall deliver the list to the county treasurer, who shall collect the tax in the manner provided for the collection of other taxes.

SECTION 15. STATE AGENCIES AUTHORIZED TO PURCHASE INSURANCE.) The state of North Dakota or any state agency, bureau, or department is hereby authorized to insure against liabilities provided by this Act for its own protection and for the protection of any state employee. If a premium savings will result therefrom, such policies of insurance may be taken out for more than one year, but in no event beyond a period of five years. If the state or any state agency, bureau, or department shall purchase insurance pursuant to this section, the purchaser shall waive its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of such coverage. The insurance coverage authorized by this Act may be in addition to insurance coverage which may be purchased by the state or any state agency, bureau, or department, or a political subdivision, under any other provision of law. The attorney general shall appear and defend all actions and proceedings against any state employee for alleged negligence within the scope of employment in any court in this state or of the United States when the agency, bureau, or department employing such employee has not purchased liability insurance coverage pursuant to law. If both parties to an action are state employees, the attorney general shall determine which state employee he shall represent, and the other employee may employ counsel to represent him. If one of the adverse parties is a state agency, bureau, or department, the attorney general shall appear and defend the agency, bureau, or department in the manner otherwise provided by law.

SECTION 16. CERTAIN CAUSES OF ACTION REINSTATED.) If a claim against a municipality was filed in the office of the city auditor in accordance with section 40-42-01 after April 8, 1975, and prior to July 1, 1977, and the cause of action against the municipality was dismissed on the basis of failure to file the

claim with the county auditor in accordance with section 4 of chapter 295 of the 1975 Session Laws of North Dakota, such claim is preserved and may be filed in the office of the city auditor within ninety days after the effective date of this Act. Notwithstanding sections 40-42-02 and 40-42-03, the time limits for rejecting a claim and for bringing an action shall be determined on the basis of the date a claim was filed as authorized by this section.

SECTION 17. AMENDMENT.) Section 24-08-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-08-03. SUPERVISION AND REPAIRS OF BRIDGE.) Any bridge built under the provisions of section 24-08-01 shall be under the supervision of the board of county commissioners, and the cost of rebuilding or repairing the same shall be paid by the county. Where the cost of rebuilding or repairing a bridge would exceed the sum of fifteen thousand dollars on estimate of the county engineer and upon the approval of the estimate by the North Dakota highway department, the county commissioners shall advertise for bids and award the contract in the manner provided by section 24-08-01. When a bridge is destroyed by flood, fire, or other casualty and the public interest would suffer by delay, the county commissioners may proceed to contract for the rebuilding or repair of such bridge without advertising for bids, regardless of the cost. The board of county commissioners at least every two years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the county road system in the county. In case any bridge on the county road system shall be deemed unsafe for public use by the said board of commissioners, it forthwith shall take steps to close the same and prevent the use thereof by the public. In case any bridge on the county road system shall be deemed unsafe for loads in excess of a certain weight, the board of commissioners forthwith shall post notices on both ends of such bridge stating that such bridge is unsafe for loads beyond that weight. The county shall not be immune from claims or suits for damages arising out of negligent failure to perform the inspection and repair duties set out above.

SECTION 18. REPEAL.) Sections 40-42-01, 40-42-02, 40-42-03, and 40-43-07 of the North Dakota Century Code are hereby repealed.

Approved April 20, 1977

## CHAPTER 304

HOUSE BILL NO. 1437  
(Winkjer)

## WRONGFUL DEATH ACTION

AN ACT to amend and reenact sections 32-21-01 and 32-21-05 of the North Dakota Century Code, relating to when action for death by wrongful act maintainable and action not abated by death.

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

SECTION 1. AMENDMENT.) Section 32-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-21-01. WHEN ACTION FOR DEATH BY WRONGFUL ACT MAINTAINABLE.) Whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would have entitled the party injured, if death had not ensued, to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation or company which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured or of the tortfeasor, and although the death shall have been caused under such circumstances as amount in law to felony.

SECTION 2. AMENDMENT.) Section 32-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-21-05. ACTION NOT ABATED BY DEATH.) The action shall not abate by the death of the injured party or the tortfeasor. If the plaintiff dies pending the action, the person next in order entitled to bring the action, by order of the court, shall be made plaintiff therein.

Approved March 17, 1977

## CHAPTER 305

HOUSE BILL NO. 1047  
(Legislative Council)  
(Interim Committee on Industry, Business & Labor "C")

## MEDICAL REVIEW PANEL

AN ACT to establish a medical review panel to review or arbitrate medical malpractice claims, to provide a method by which a panel shall be selected, to prescribe the powers and duties of the panel, and to authorize the panel to make a report which shall be admissible into evidence in any subsequent action based on a medical malpractice claim.

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

SECTION 1. MEDICAL REVIEW PANEL TO REVIEW CLAIMS.) A medical review panel consisting of two attorneys and two physicians licensed to practice in this state and one citizen member who shall represent health care consumers shall review all claims based upon alleged professional negligence against a health care provider. No action against a health care provider based upon alleged professional negligence shall be commenced in any court in this state until the claimant shall file a certificate of review with the court. For purposes of this Act, a "health care provider" includes any person, corporation, facility, or institution licensed by this state to provide health care or professional services as a physician, or hospital, or an officer, employee, or agent thereof acting in the course and scope of his employment.

SECTION 2. REPORT ADMISSIBLE AS EVIDENCE - PARTIES MAY AGREE TO BINDING ARBITRATION.)

1. Any report issued by a panel shall be admissible as evidence in any action subsequently brought by a claimant, but no report shall be considered to be determinative of any facts, issues, or opinions presented to a panel unless the parties voluntarily submit their matters of difference to the panel and agree to abide by its judgment. Either party may challenge the opinions expressed by the panel in the same manner in which an expert witness may be challenged. Either party, at his cost, may call any member of the panel as a witness.

2. Whenever both parties shall agree to submit their controversy to the panel for its determination as an arbitrator, the parties shall file the agreement, which shall be in writing, with the court. If the parties shall agree to arbitration of the controversy, the panel shall make an award based upon the report of the panel, and the award shall be filed with the court and entered upon the docket as a judgment. An award made in this manner shall have the full force and effect of a judgment.

SECTION 3. APPLICATION FOR REVIEW.) Any person with a claim against a health care provider based upon alleged professional negligence shall apply to the judge of any court which may have jurisdiction over the claim to establish a panel according to the provisions of this Act. The filing of an application shall toll the applicable statute of limitations to and including a period of ninety days following the issuance of a report by the panel. A copy of the application shall be sent by certified mail to each potential party named in the application at his last and usual place of business or to his residence.

SECTION 4. SELECTION OF PANEL.)

1. All physicians who have been placed upon a list compiled by the state medical association and who are licensed to practice in this state and attorneys who have been placed upon a list compiled by the state bar association and who are licensed to practice in this state shall be available for selection to serve upon a medical review panel. A physician or attorney selected to serve in the manner provided by this Act shall do so unless he is excused for good cause by the judge of the court to which an application for review has been made. Good cause may be shown by an affidavit setting forth the facts which show that service upon the panel constitutes an unreasonable burden or undue hardship upon the affiant or upon those relying on his services. The court may also excuse any attorney or physician for good cause upon the motion of any party. The state bar association and the state medical association shall each compile a list of persons who are members of their respective associations to serve upon the panel, and each person so placed upon such lists shall, in the opinion of the respective associations, have demonstrated skills and abilities which would enable such persons to serve the interests of justice.
2. The claimant and potential defendant shall each nominate one physician and one attorney to serve upon the panel. The parties shall notify the court to which an application for review has been made and the other party or parties within ten days of such nomination.
3. Within ten days after any nomination, either party may challenge a nomination without cause, and the party whose nominee has been challenged shall select another

nominee. However, if two or more such challenges are made, the judge shall compile a list of three physicians or attorneys, from which each party shall strike one name, and the remaining physician or attorney shall become a nominee.

4. The physicians and attorneys selected in the manner provided by this section shall nominate a citizen member to serve upon the panel from a list compiled by the court. No challenge may be made without cause to any person nominated pursuant to this subsection.
5. Within thirty days after an application for review has been made to the court, all nominations shall be made. The judge shall appoint the nominees to serve upon the panel, and the panel shall be convened at a time and place set by the judge.

SECTION 5. PANEL TO SELECT CHAIRMAN.) The panel shall select any member of the panel to act as chairman, and the chairman shall preside at all meetings, which shall be conducted informally. It shall be the responsibility of the chairman to prepare the report of the panel with the cooperation and assistance of the other members of the panel.

SECTION 6. EVIDENCE SUBMITTED TO PANEL.) The evidence to be considered by the panel shall be submitted by the parties in written form only. Such evidence may consist of medical charts, x-rays, laboratory tests, excerpts of treatises, depositions of witnesses including parties, and other evidence necessary for a determination of the controversy. Depositions of parties and witnesses may be taken prior to the convening of the panel in accordance with rule 27 of the North Dakota Rules of Civil Procedure, or in accordance with the Rules of Civil Procedure applicable to the taking of depositions or the submission of interrogatories after a civil action has been commenced. At the request of any of the parties, the evidence shall be masked or edited to conceal the identity of the parties.

SECTION 7. PARTIES MAY QUESTION PANEL.) After submission of all evidence and upon ten days' notice to the panel and the other party, either party may request the panel to convene at a time and place set by the panel. Either party may question the panel concerning any matters relevant to the controversy prior to the issuance of the report of the panel.

SECTION 8. PANEL MAY REQUEST ADDITIONAL INFORMATION.) The panel may request any additional information which it may need to determine the controversy before it. The panel may consult with medical authorities and may examine reports of other health care providers which may be relevant to the controversy before the panel. Both parties shall have access to any materials, information, or evidence submitted to the panel.

SECTION 9. PANEL DECISION.) After reviewing all evidence and after oral argument, if requested, the panel shall issue its opinion within thirty days. The opinion shall be mailed to each

of the parties and shall be limited to one or more of the following conclusions:

1. The evidence supports the conclusion that the defendant health care provider failed to comply with the appropriate standard of care as charged in the complaint. If the panel reaches this conclusion, the opinion shall specify the particulars of the failure, a description of the physical condition proximately caused by this failure, and an enumeration of any claimed symptoms or conditions not proximately caused by the failure.
2. The evidence supports the conclusion that the defendant health care provider met the appropriate standard of care required under the circumstances.
3. There is a material issue of fact bearing on liability to be decided by a court or jury in specified particulars.

No dollar amounts or percentages of disability shall be provided by the panel. A majority vote of the members of the panel shall prevail. The report of the panel shall be signed only by the chairman, who shall certify that the report reflects the opinion of a majority of the members thereof.

Where the panel opinion is not unanimous, the dissenting conclusions shall be included in the report.

SECTION 10. FEES AND EXPENSES.) Each member of the panel shall be paid fifty dollars per diem, but not to exceed a total of two hundred dollars for services rendered as a member of the panel, and reasonable travel expenses. Each party shall pay one-half the cost of such fees and expenses, which shall be determined by the judge. The judge may require a deposit of all or a portion of the probable costs and expenses by either party or his surety, and the failure of a party to pay such fees or expenses or to provide such deposit may be treated as a civil contempt.

Approved April 21, 1977