

PROPERTY

CHAPTER 425

HOUSE BILL NO. 1069
(Legislative Council)
(Interim Committee on Natural Resources)

SOLAR EASEMENTS

AN ACT to provide for solar easements, and for the contents of instruments creating those easements.

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

SECTION 1. SOLAR EASEMENT - CREATION.) Any easement obtained for the purpose of exposure of a solar energy device to the direct rays of the sun shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

SECTION 2. CONTENTS.) Any instrument creating a solar easement shall include, but shall not be limited to, all of the following:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.
2. Any terms, conditions, or both under which the solar easement is granted or will be terminated.
3. Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

SECTION 3. DEFINITION.) For purposes of this Act, the term "solar energy device" means the device, mechanism, or apparatus designed to receive the direct rays of the sun and convert those rays into heat, electrical, or other form of energy for the purpose of providing heating, cooling, or electrical power.

Approved March 12, 1977

CHAPTER 426

HOUSE BILL NO. 1087
(Mertens)

REAL PROPERTY USE RESTRICTIONS

AN ACT to regulate real property easements, servitudes, or any nonappurtenant restriction on the use of real property.

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

SECTION 1. REGULATIONS GOVERNING EASEMENTS, SERVITUDES, OR NONAPPURTENANT RESTRICTIONS ON THE USE OF REAL PROPERTY.) Real property easements, servitudes, or any nonappurtenant restrictions on the use of real property, which become binding after the effective date of this Act, shall be subject to the regulations contained in this Act. These regulations shall be deemed a part of any agreement for such interests in real property whether or not printed in a document of agreement.

1. The area of land covered by the easement, servitude, or nonappurtenant restriction on the use of real property shall be properly described, and shall set out the area of land covered by the interest in real property.
2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property shall be specifically set out, and in no case shall the duration of any interest in real property regulated by this Act exceed ninety-nine years.
3. No increase in the area of real property subject to the easement, servitude, or nonappurtenant restriction shall be made except by negotiation between the owner of the easement, servitude, or nonappurtenant restriction and the owner of the servient tenement.

Approved March 31, 1977

CHAPTER 427

HOUSE BILL NO. 1296
(Winkjer)

UNIFORM DISCLAIMER OF TRANSFERS UNDER NONTTESTAMENTARY INSTRUMENTS ACT

AN ACT to enact the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act relating to the disclaimer of interests under a nontestamentary instrument, contract, or power of appointment.

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

SECTION 1. RIGHT TO DISCLAIM TRANSFER.) A person, or the representative of an incapacitated person or protected person, who is a grantee, donee, surviving joint tenant, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to him of any property or interest therein by delivering or filing a written disclaimer under this Act. A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit thereunder. The right to disclaim does not survive the death of the person having it. The disclaimer shall describe the property or interest therein disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant.

SECTION 2. TIME AND PLACE OF DELIVERY OR FILING.)

1. An instrument disclaiming a present interest shall be delivered or filed no later than six months after the effective date of the nontestamentary instrument or contract. An instrument disclaiming a future interest shall be delivered or filed not later than six months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the instrument shall be delivered or filed not later than six months after that person has actual knowledge of the

existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest.

2. The disclaimer, or a copy thereof, shall be delivered in person or mailed by registered mail to the trustee or other person having legal title to, or possession of, the property or interest disclaimed or who is entitled thereto in the event of disclaimer. If real property or an interest therein is disclaimed, a copy of the instrument may be filed for record in the office of the register of deeds of the county in which the real estate is situated.

SECTION 3. EFFECT OF DISCLAIMER.) Unless the nontestamentary instrument or contract provides for another disposition, the property or interest therein disclaimed shall devolve as if the disclaimant had died before the effective date of the instrument or contract. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

SECTION 4. WAIVER AND BAR.)

1. The right to disclaim property or an interest therein is barred by any of the following:
 - a. An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor.
 - b. A written waiver of the right to disclaim.
 - c. An acceptance of the property or interest or benefit thereunder.
 - d. A sale of the property or interest under judicial sale made before the disclaimer is effected.
2. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.
3. The instrument of disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him.

SECTION 5. EXCLUSIVENESS OF REMEDY.) This Act does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

SECTION 6. APPLICATION.) An interest in property existing on the effective date of this Act as to which the time for filing a disclaimer under this Act would have begun to run were this Act in effect when the interest was created may be disclaimed within six months after the effective date of this Act.

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION.) This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION 8. SHORT TITLE.) This Act may be cited as the "Uniform Disclaimer of Transfers under Nontestamentary Instruments Act".

Approved March 31, 1977

CHAPTER 428

SENATE BILL NO. 2277
(Freed)

LEASE SECURITY DEPOSITS

AN ACT to create and enact a new section to chapter 47-16 of the North Dakota Century Code, relating to lease security deposits on real property and dwellings; the return of such deposits with interest upon termination of a lease; deposit amounts which may be withheld by a lessor and conditions under which amounts may be withheld; recovery by a lessee for wrongful withholding of security deposits; providing for transfer of security deposits upon a change of ownership; and binding the lessor holding the lease at the time of termination to return the security deposit.

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

SECTION 1.) A new section to chapter 47-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

REAL PROPERTY AND DWELLING SECURITY DEPOSITS - RETURN WITH INTEREST - ALLOWABLE WITHHOLDING - LESSOR BOUND TO RETURN - DAMAGES FOR WRONGFUL WITHHOLDING.)

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in an interest-bearing account at the maximum rate allowed for passbook savings established solely for security deposits. The security deposit and any interest accruing thereon shall be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A landlord may not demand or receive security, however denominated, in an amount or value in excess of one month's rent.
2. A lessor may apply security deposit money and accrued interest upon termination of a lease towards any damages the lessor has suffered by reason of deteriorations or injuries to the real property or dwelling through the negligence of the lessee or his guest. Application of a security deposit towards damages shall be itemized by the lessor. Such itemization

together with the amount due shall be delivered or mailed to the lessee at the last address furnished lessor, along with a written notice within thirty days after termination of the lease and delivery of possession by the lessee. The notice shall contain a statement of any amount still due the lessor or the refund due the lessee. A lessor is not required to pay interest on security deposits if the period of occupancy was less than nine months in duration.

3. A lessor shall be liable for treble damages for any security deposit money withheld without reasonable justification.
4. Upon a transfer in ownership of the leased real property or dwelling, the security deposit and accrued interest shall be transferred to the grantee of the lessor's interest. The grantor shall not be relieved of liability under this Act until transfer of the security deposit to the grantee. The holder of the lessor's interest in the real property or dwelling at the termination of a lease shall be bound by this section even though such holder was not the original lessor who received the security deposit.
5. This Act shall apply to the state and to political subdivisions of the state that lease real property or dwellings and require money as a security deposit.

Approved April 20, 1977

CHAPTER 429

HOUSE BILL NO. 1320
(Stenehjem, Swiontek, Unhjem)

RESIDENTIAL DWELLING UNIT
MAINTENANCE

AN ACT to provide for landlord and tenant obligations to maintain residential dwelling units; and to repeal section 47-16-12 of the North Dakota Century Code, relating to the obligations of a lessor to repair dwelling units.

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

SECTION 1. LANDLORD OBLIGATIONS - MAINTENANCE OF PREMISES.)

1. A landlord of a residential dwelling unit shall:
 - a. Comply with the requirements of applicable building and housing codes materially affecting health and safety.
 - b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
 - c. Keep all common areas of the premises in a clean and safe condition.
 - d. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.
 - e. Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.
 - f. Supply running water and reasonable amounts of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or where the dwelling

unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection or where the water or heat is unavailable due to supply failure by a public utility.

2. In case of noncompliance with the requirements of subdivisions b through f of subsection 1, a reasonable time shall be allowed to remedy such noncompliance.
3. If the duty imposed by subdivision a of subsection 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision a of subsection 1.
4. The landlord and tenant of a single-family residence may agree in writing that the tenant perform the landlord's duties specified in subdivisions e and f of subsection 1 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.
5. The landlord and tenant of any dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:
 - a. The agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration.
 - b. The work is not necessary to cure noncompliance with subdivision e of subsection 1.
 - c. The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.
6. The landlord may not treat performance of the separate agreement described in subsection 4 as a condition to any obligation or performance of any rental agreement.

SECTION 2. TENANT OBLIGATIONS - MAINTENANCE OF DWELLING UNIT.) A tenant of a residential dwelling unit shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
2. Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.

3. Periodically remove all ashes, garbage, rubbish, and other waste from the tenant's dwelling unit, and dispose of them in a clean and safe manner.
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.
5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises.
6. Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so.
7. Conduct himself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises.

SECTION 3. UNCONSCIONABILITY.)

1. If a court of competent jurisdiction, as a matter of law, finds:
 - a. A residential dwelling unit rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.
 - b. A settlement in which a party waives or agrees to forego a claim or right under this Act or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.
2. If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

SECTION 4. REMEDY AFTER TERMINATION.) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

SECTION 5. MITIGATION OF DAMAGES.) Any party aggrieved under this Act may recover appropriate damages. However, the aggrieved party has a duty to mitigate damages.

SECTION 6. ENFORCEMENT OF ACT.) Any right or action provided by this Act is enforceable by action and the court may award reasonable attorney's fees to the prevailing party.

SECTION 7. REPEAL.) Section 47-16-12 of the North Dakota Century Code is hereby repealed.

Approved April 21, 1977

CHAPTER 430

SENATE BILL NO. 2276
(Freed)

SATISFACTION OF MINERAL LEASE

AN ACT to amend and reenact section 47-16-36 of the North Dakota Century Code, relating to the duty of a lessee to have a terminated or forfeited oil, gas, or other mineral lease recorded and allowing a lessor to record an affidavit of forfeiture upon failure of lessee to do so; and providing for a change from an affidavit of forfeiture to a satisfaction of lease.

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

SECTION 1. AMENDMENT.) Section 47-16-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-36. DUTY OF LESSEE TO HAVE TERMINATED OR FORFEITED LEASE RELEASED - PUBLICATION NOTICE - SATISFACTION OF LEASE TO BE RECORDED - NOTICE TO REAL PROPERTY OWNER - REMEDIES.) When any oil, gas, or other mineral lease heretofore or hereafter given on real property situated in any county of North Dakota and recorded therein shall terminate or become forfeited it shall be the duty of the lessee, his successors or assigns within fifteen days after the date of the termination or forfeiture of any such lease, to have such lease surrendered in writing, such surrender to be signed by the party making the same, acknowledged and placed on record in the county where the leased real property is situated without cost to the owner thereof. If the said lessee, his successors or assigns, shall fail or neglect to execute and record such surrender within the time provided for, then the owner of said real property may serve upon said lessee, his successors or assigns of record, in person or by registered or certified mail, at his last known address, or if the post-office address is not shown of record then by publication for three consecutive weeks in a newspaper of general circulation in the county where the real property is situated, a notice in writing in substantially the following form:

To _____: I, the undersigned, owner of the following described land situated in _____ County, North Dakota, to wit: (description of land) upon which a lease dated _____ day of _____ 19____, was given to _____ do hereby notify you that such lease has

terminated or become forfeited by breach of the terms thereof, that I hereby elect to declare and do declare the said lease forfeited and void and that, unless you do, within twenty days from this date, notify the register of deeds of said county as provided by law that said lease has not been forfeited, I will file with the said register of deeds a satisfaction of lease as provided by law, and I hereby demand that you execute or have executed a proper surrender of said lease and that you put the same of record in the office of the register of deeds of said county within twenty days from this date.

Dated this _____ day of _____ 19__.

The owner of said real property may after twenty days from the date of service, registration, or first publication of said notice, file with the register of deeds of the county where said real property is situated a satisfaction of lease setting forth, that the affiant is the owner of said real property, that the lease has terminated or that the lessee, or his successors or assigns has failed and neglected to comply with the terms of said lease, reciting the facts constituting such failure and that the same has been forfeited and is void, and setting out in said satisfaction of lease a copy of the notice served, as above provided and the manner and time of the service thereof. If the lessee, his successors or assigns, shall within such twenty days after service, give notice in writing to the register of deeds of the county where said real property is located that said lease has not been forfeited and that said lessee, his successors or assigns, still claim that said lease is in full force and effect, then the said satisfaction of lease shall not be recorded but the register of deeds shall notify the owner of the real property of the action of the lessee, his successors or assigns, and the owner of the real property shall be entitled to the remedies now provided by law for the cancellation of such disputed lease. If the lessee, his successors or assigns, shall not notify the register of deeds, as above provided, then the register of deeds shall record said satisfaction of lease and thereafter the record of the said lease shall not be notice to the public of the existence of said lease or of any interest therein, or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns, against the lessor, his successors or assigns.

Approved March 31, 1977

CHAPTER 431

HOUSE BILL NO. 1106
(Conmy)

HOMESTEAD

AN ACT to amend and reenact section 47-18-01 and subsection 4 of section 47-18-04 of the North Dakota Century Code, relating to the definition of a homestead for exemption from judgments and execution and to homesteads subject to execution.

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

SECTION 1. AMENDMENT.) Section 47-18-01 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-01. "HOMESTEAD" DEFINED - EXEMPTION.) The homestead of every head of the family residing in this state shall consist of the land upon which the claimant resides, and the dwelling house situated thereon in which the homestead claimant resides, with all its appurtenances, and all other improvements on said land, the total not to exceed sixty thousand dollars in value, over and above liens or encumbrances or both. Such homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. In no case shall the homestead embrace different lots or tracts of land unless they are contiguous.

SECTION 2. AMENDMENT.) Subsection 4 of section 47-18-04 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of said homestead is more than sixty thousand dollars over and above liens or encumbrances thereon, and then only to the extent of any value in excess of the sum total of such liens and encumbrances plus said sixty thousand dollars.

Approved March 11, 1977

CHAPTER 432

HOUSE BILL NO. 1105
(Conmy)

HEAD OF FAMILY

AN ACT to amend and reenact section 47-18-02 of the North Dakota Century Code, relating to the definition of the head of a family as used for homestead purposes.

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

SECTION 1. AMENDMENT.) Section 47-18-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-02. "HEAD OF FAMILY" DEFINED.) The phrase "head of a family" as used in this chapter shall mean:

1. The husband or wife when the claimant is a married person, but in no case are both husband and wife entitled each to a homestead.
2. Every person who has residing on the premises with him and under his care and maintenance, any of the following:
 - a. His child or the child of his deceased spouse, whether by birth or adoption.
 - b. A minor brother or sister or the minor child of a deceased brother or sister.
 - c. A father, mother, grandfather, or grandmother.
 - d. The father or mother or grandfather or grandmother of a deceased husband or wife.
 - e. An unmarried sister or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.
3. Every person who provides support for unmarried minor children of a previous marriage of the person, even though the children do not reside on the premises with the person.

CHAPTER 433

HOUSE BILL NO. 1551
(Conmy)

HOMESTEAD DECLARATION

AN ACT to amend and reenact section 47-18-18 of the North Dakota Century Code, relating to the execution and acknowledgment of a declaration of homestead.

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

SECTION 1. AMENDMENT.) Section 47-18-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-18. DECLARATION OF HOMESTEAD - HOW EXECUTED AND ACKNOWLEDGED.) In order to select a homestead the husband or other head of the family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

A finding of a homestead exemption by the bankruptcy court on behalf of a 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, shall be a declaration of homestead.

Filing for record in the register of deeds office of the county where the homestead is located a certified copy of the bankrupt's discharge of bankruptcy constitutes notice that the property has been found to be a homestead and exempt from those judgments determined by the bankruptcy court to be discharged.

Approved April 20, 1977

CHAPTER 434

HOUSE BILL NO. 1545
(Conmy)

INSTRUMENTS RECORDED WITHOUT
ACKNOWLEDGMENT

AN ACT to amend and reenact section 47-19-02 of the North Dakota Century Code, relating to instruments entitled to record without acknowledgment.

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

SECTION 1. AMENDMENT.) Section 47-19-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-19-02. INSTRUMENTS ENTITLED TO RECORD WITHOUT ACKNOWLEDGMENT.) The following instruments may be recorded without acknowledgment or further proof:

1. Any judgment affecting the title to or the possession of real property authenticated by the certificate of the clerk of the court in which such judgment is rendered;
2. Any letters patent from the United States;
3. Any duplicate final register's receipt;
4. A certificate from the United States land office;
5. A contract between the state and a purchaser of school and institutional lands for the purchase and sale of such lands;
6. An assignment of any such contract when such assignment has been approved by the board of university and school lands;
7. Any certified copy of a patent or of a duplicate final register's receipt or certificate when certified and proved according to the laws of the United States and of this state in such manner as to entitle it to admission as evidence in the courts of this state, and when so recorded, it shall be notice in like manner and to the same extent as the originals thereof would have been if the same had been recorded;

8. Any affidavit made as is provided in section 47-19-12;
9. A certified copy of an order of a county court relating to estate tax determinations;
10. A statement of the state tax commissioner relating to estate tax determination; and
11. A certified copy of discharge of bankrupt.

Approved March 19, 1977

CHAPTER 435

SENATE BILL NO. 2416
(Freed)

**FINANCING STATEMENT RECORDED WITHOUT
ACKNOWLEDGMENT**

AN ACT to create and enact a new subsection to section 47-19-02 of the North Dakota Century Code, relating to what instruments may be recorded without acknowledgment.

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

SECTION 1.) A new subsection to section 47-19-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

A financing statement covering any item described in subsection 5 of section 41-09-41.

Approved March 17, 1977

CHAPTER 436

SENATE BILL NO. 2366
(Schirado, Freed)

MUSIC PIRACY ACT

AN ACT to prohibit the unauthorized transfer of recorded sound and the unauthorized recording of live performances, to require disclosure of the name and address of the manufacturer of recordings for sale, providing for destruction of recordings unlawfully produced, and providing a penalty.

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

SECTION 1. DEFINITION.) As used in this Act, the term "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles on which sound is recorded, and from which the transferred recorded sounds are directly derived.

SECTION 2. UNAUTHORIZED TRANSFER OF RECORDED SOUND OR THE RECORDING OF ANY PERFORMANCE PROHIBITED.) It is hereby declared unlawful for any person to knowingly:

1. Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, tape, wire, film, or other article on which sounds are recorded, with the intent to sell or cause to be sold for profit, or used to promote the sale of any product, any article on which sounds are so transferred without the express consent of the owner.
2. And without the consent of the performer, transfer to or cause to be transferred to any phonograph record, disc, wire, tape, film, or other article, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any product, such article onto which such performance is so transferred.
3. Or with reasonable grounds to know, advertise, or offer for sale or resale, or sell or resell, distribute

or possess for such purposes, any recorded article that has been produced without the consent of the owner. Possession of five or more duplicate copies, or twenty or more individual copies of such recorded articles, produced without the consent of the owner, shall create a rebuttable presumption that such devices are intended for sale or distribution in violation of this section.

4. Or with reasonable grounds to know, sell or resell, distribute or possess for such purposes, any phonograph record, disc, wire, tape, film, or other article embodying any performance, whether live before an audience, or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

SECTION 3. DISCLOSURE OF NAME AND ADDRESS OF MANUFACTURER.) No person shall advertise or offer for sale or resale, or sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box or jacket, clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group of performers.

SECTION 4. FORFEITURE AND DESTRUCTION OF ILLEGAL RECORDINGS.) Any recording produced in violation of this Act, and any equipment used in the production thereof, shall be subject to forfeiture and destruction upon seizure by any state or local law enforcement agency or officer thereof.

SECTION 5. EXEMPTIONS.) The provisions of this Act shall not apply to:

1. Any broadcaster who, in connection with or as part of a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any sounds recorded on a sound recording.
2. Any person who transfers sounds in the home, for personal use, and without compensation for such transfer.
3. Any person who transfers or causes to be transferred any recorded sounds or transcript thereof in any judicial or administrative proceedings conducted pursuant to law.

SECTION 6. PENALTY.) Any person violating subsection 1 or 2 of section 2 of this Act shall, upon conviction thereof, be guilty of a class C felony. Each individual, felonious manufacture or production of a recorded article shall constitute a separate offense and be punishable as such. Any person violating the provisions of subsection 3 or 4 of section 2, or the provisions of section 3 of this Act shall, upon conviction thereof, be guilty of a class B misdemeanor.

CHAPTER 437

HOUSE BILL NO. 1107
(Committee on Natural Resources)
(At the request of the Board of University and School Lands)

ABANDONED PROPERTY ADMINISTRATION

AN ACT to amend and reenact sections 47-30-24 and 47-30-26 of the North Dakota Century Code, relating to the administration of the abandoned property laws.

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

SECTION 1. AMENDMENT.) Section 47-30-24 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-30-24. ADMINISTRATION.) There is hereby created under authority of the board of university and school lands a division of the state land commissioner's office, to be known as the abandoned property office, for the purpose of enforcement and administration of the provisions of this chapter. The state land commissioner shall employ the administrator and such other personnel as are necessary for the proper administration of this chapter and shall set their salaries, within limits of legislative appropriations. All public officers shall assist the administrator in carrying out the administration of this chapter. The legislative assembly shall make biennial appropriations to the state land commissioner's office allocated to the office of abandoned property and shall biennially review the needs of the office.

SECTION 2. AMENDMENT.) Section 47-30-26 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-30-26. RULES AND REGULATIONS.) The board of university and school lands is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

Approved March 5, 1977