

JUDICIAL REMEDIES

CHAPTER 400

SENATE BILL NO. 2058
(Legislative Council)
(Interim Judiciary Committee)

EXEMPLARY DAMAGES

AN ACT to amend and reenact section 32-03-07 of the North Dakota Century Code, relating to claims for exemplary damages.

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

* SECTION 1. AMENDMENT. Section 32-03-07 of the 1985 Supplement to 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. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

Approved March 26, 1987
Filed March 30, 1987

* NOTE: Section 32-03-07 was also amended by section 15 of House Bill No. 1571, chapter 404.

CHAPTER 401

HOUSE BILL NO. 1079
(Representative Wald)
(Senator Nalewaja)

NONPROFIT CORPORATION DIRECTOR LIABILITY

AN ACT to provide immunity from civil liability to directors, officers, and trustees of nonprofit organizations; and to amend and reenact subsection 14 of section 10-24-05 of the North Dakota Century Code, relating to indemnification of directors and officers of nonprofit corporations.

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

SECTION 1. Immunity of officers, directors, and trustees of nonprofit organizations. Any person who serves as a director, officer, or trustee of a nonprofit organization that is, or would qualify as a nonprofit organization that is, described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section 501(c) of the Internal Revenue Code of 1954 as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee of the nonprofit organization.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.
3. The officer, director, or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee of the nonprofit organization and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee of the nonprofit organization.

SECTION 2. AMENDMENT. Subsection 14 of section 10-24-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. When any claim is asserted, whether by action in court or otherwise, against any person by reason of his being or having been a director, or officer of a corporation, the court in the proceeding in which such claim has been asserted, or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity, may assess indemnity against the corporation, its receiver, or trustee, for the amount paid by such director or officer in satisfaction of any judgment on or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), and any expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable, provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of ~~actual~~ gross negligence or willful misconduct in the performance of his duties as such director or officer. The right and remedy provided by this section shall be exclusive when any action brought on such claim has resulted in judgment against the person claiming indemnity, or when the person claiming indemnity has paid or agreed to pay any sum in settlement of any such claim or action, and in such case indemnity shall be awarded only upon order of court pursuant to the provisions of this section. In all other cases the right and remedy provided by this section shall not be exclusive, but each corporation shall have power to indemnify any director or officer or former director or officer of such corporation against expense and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of ~~actual~~ gross negligence or willful misconduct in the performance of his duties as such director or officer.

Approved March 27, 1987

Filed March 30, 1987

CHAPTER 402

HOUSE BILL NO. 1080
(Representative Wald)
(Senator Nalewaja)

VOLUNTEER SERVICES CIVIL IMMUNITY

AN ACT to provide immunity from civil liability to volunteers providing services for nonprofit organizations and sports teams; and to declare an emergency.

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

SECTION 1. Immunity of volunteers providing services for nonprofit organizations. Except as provided in section 2 of this Act, any person who, on a volunteer basis, provides services or performs duties on behalf of a nonprofit organization is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The person who caused the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties as a volunteer for the nonprofit organization.
2. The act or omission did not constitute willful misconduct or gross negligence.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

SECTION 2. Immunity of volunteer athletic coaches and officials.

1. Any person who provides services or assistance free of charge, except for reimbursement of expenses, as an athletic coach, manager, or official for a sports team which is organized or performing pursuant to a nonprofit or similar charter is immune from civil liability for any act or omission resulting in damage or injury to a player or participant if at the time of the act or omission all the following are met:
 - a. The person who caused the damage or injury was acting in good faith, in the exercise of reasonable and

ordinary care, and in the scope of that person's duties for the sports team.

- b. The act or omission did not constitute willful misconduct or gross negligence.
 - c. The coach, manager, or official had participated in a safety orientation and training program established by the league or team with which the person is affiliated.
2. This section does not grant immunity to:
- a. Any person causing damage as the result of the negligent operation of a motor vehicle.
 - b. Any person for any damage caused by that person permitting a sports competition or practice to be conducted without supervision.
 - c. Any athletic coach, manager, or official providing service as part of a public or private educational institution's athletic program.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 403

HOUSE BILL NO. 1631
(Wentz)

GOOD SAMARITAN ACT

AN ACT to create and enact chapter 32-03.1 of the North Dakota Century Code, relating to exemption for liability to encourage the public to render assistance to victims of accident and illness.

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

SECTION 1. Chapter 32-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

32-03.1-01. This Act shall be known and may be cited as the "Good Samaritan Act."

32-03.1-02. Definitions. For the purposes of this Act, the following terms shall have the designated meanings:

1. "Aid or assistance necessary or helpful in the circumstances" means any actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap, or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed he could successfully undertake.
2. "Appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance" means any physician, nurse, emergency medical technician, or other medical or paramedical personnel whom the aider reasonably believes is such, based upon the representations of the person or that person's actions in providing medical aid.
3. "Employed expressly or actually" means either that the person's formal duties include the provision of emergency medical aid, or that the person customarily provides such

aid and is informally expected or relied upon to do so in the course of their employment.

4. "Gross negligence" means acts or omissions falling short of intentional misconduct which nevertheless show a failure to exercise even slight care or any conscious interest in the predictable consequences of the acts or omissions. For the purposes of this Act, "gross negligence" includes the failure of an aider to relinquish direction of the care of an injured or ill person when an appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance assumes or attempts to assume responsibility for the care of the injured or ill person.

32-03.1-03. Actions barred. No person, or the person's employer, subject to the exceptions in sections 32-03.1-04, 32-03.1-05, and 32-03.1-09, who renders aid or assistance necessary or helpful in the circumstances to other persons who have been injured or are ill as the result of an accident or illness, or any mechanical, external or organic trauma, shall be named as a defendant or held liable in any personal injury civil action by any party in this state for acts or omissions arising out of a situation in which emergency aid or assistance is rendered, unless it is plainly alleged in the complaint and later proven that such person's acts or omissions constituted intentional misconduct or gross negligence.

32-03.1-04. Criminal immunity. No person who renders aid or assistance necessary or helpful in the circumstances to other persons who have been injured or are ill as the result of an accident or sudden illness, or any mechanical, external or organic trauma, shall be criminally charged in this state for having practiced medicine or nursing without a license, provided that the aider shall relinquish direction of the care of the injured person when an appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance assumes responsibility for the care of the injured person.

32-03.1-05. Physicians or surgeons. Nothing in this Act shall be construed to deprive any physician or surgeon licensed in this state of the right to collect reasonable fees for any acts of aid, assistance or treatment; or any other person rendering aid or assistance under this Act, or those whose property is necessarily damaged in the course of such aid or assistance under this Act, of the right to reimbursement, from the injured or ill person or his estate for any expenses or damages which appeared reasonable and necessary to incur under the circumstances. Any person rendering aid or assistance with an expectation of remuneration shall not be covered by the provisions of this Act.

32-03.1-06. Exceptions. This Act shall not encompass any person who, at the time of the emergency, was employed expressly or actually for the purpose of providing emergency medical aid to humans, either within or outside of a hospital or other place or

vehicle with medical equipment, for emergency medical aid or other assistance rendered in the regular course of their employment. Such persons and their employers shall be liable for their acts and omissions in rendering emergency medical aid in the regular course of their employment, according to the prevailing law in this state in existence at the date this Act becomes effective.

32-03.1-07. Limited repealer. This Act supersedes any conflicting provision of law which is inconsistent with this Act except sections 23-27-04.1, 32-03-40, 32-03-42, 39-08-04.1, 43-12-33, 43-12-34, 43-17-37, and 43-17-38.

32-03.1-08. Costs and fees. Notwithstanding any other provision in the laws of this state, or any court rules, if a party names a defendant in a suit alleging intentional misconduct or gross negligence, as described in section 32-03.1-02, and the trial judge dismisses the complaint or grants a defendant's motion for judgment on the pleadings, or directs a verdict for a defendant, or grants a defendant's motion for judgment notwithstanding the verdict, or at any point in the proceedings grants a plaintiff's motion to discontinue the action against the defendant, the defendant shall be entitled to full costs and reasonable attorneys fees expended in connection with his defense of the action. If good reason is shown, the trial judge may suspend the operation of this section.

32-03.1-09. Actions not barred. Nothing in this Act shall be construed to bar a civil action by any injured or ill person or their survivors against any person for having tortiously caused an injury or emergency situation. Nothing in this Act shall be construed to relieve any person, tortiously causing an injury or emergency situation, from any affirmative duty to provide proper aid or assistance. If the defendant prevails in such an action, he shall be entitled to costs and fees only as the other statutes and court rules of this state provide.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 404

HOUSE BILL NO. 1571
(Representatives Payne, Koland, Skjerven)
(Senator Tallackson)

TORT LIABILITY

AN ACT to provide for comparative fault, several liability, separate finding of damages, reduction for collateral source payments, periodic payments, economic, noneconomic, and exemplary damages; to suspend or to repeal sections 9-10-07 and 32-03-07 of the North Dakota Century Code, relating to comparative negligence and exemplary damages; and to provide an expiration date.

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

SECTION 1. Definition. As used in this Act, "fault" includes acts or omissions that are in any measure negligent or reckless towards the person or property of the actor or others, or that subject a person to tort liability or dram shop liability. The term also includes strict liability for product defect, breach of warranty, negligence or assumption of risk, misuse of a product for which the defendant otherwise would be liable, and failure to exercise reasonable care to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

SECTION 2. Modified comparative fault. Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property unless the fault was as great as the combined fault of all persons who contribute to the injury, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act

in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, and failure to avoid injury. Under this section, fault does not include any product liability, including product liability involving negligence or strict liability or breach of warranty for product defect.

SECTION 3. Pure comparative fault - Product liability actions.

Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault means product liability involving negligence or strict liability or breach of warranty for product defect.

SECTION 4. Economic and noneconomic damages for wrongful death or injury to person. In any civil action for damages for wrongful death or injury to a person and whether arising out of breach of contract or tort, damages may be awarded by the trier of fact as follows:

1. Compensation for economic damages, which are damages arising from medical expenses and medical care, rehabilitation services, custodial care, loss of earnings and earning capacity, loss of income or support, burial costs, cost of substitute domestic services, loss of employment or business or employment opportunities and other monetary losses.
2. Compensation for noneconomic damages, which are damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, fear of injury, loss or illness, loss of society and companionship, loss of consortium, injury to reputation, humiliation and other nonpecuniary damage.

SECTION 5. Separate finding on damages. In awarding compensation for damages to any party, the trier of fact shall make separate findings which must specify:

1. The amount of compensation for past economic damages.
2. The amount of compensation for future economic damages.
3. The amount of compensation for noneconomic damages.

SECTION 6. Reduction for collateral source payments. After an award of economic damages, the party responsible for the payment thereof is entitled to and may apply to the court for a reduction of the economic damages to the extent that the economic losses presented to the trier of fact are covered by payment from a collateral source. A "collateral source" payment is any sum from any other source paid or to be paid to cover an economic loss which need not be repaid by the party recovering economic damages, but does not include life insurance, other death or retirement benefits, or any insurance or benefit purchased by the party recovering economic damages.

SECTION 7. Pleading of damages. Any pleading for damages for death or injury to a person may pray for economic and noneconomic damages separately. Any prayer for noneconomic damages of less than fifty thousand dollars or for economic damages may be for a specific dollar amount. Any prayer for noneconomic damages for fifty thousand dollars or more must be stated generally as "a reasonable sum but not less than fifty thousand dollars".

SECTION 8. Review of reasonableness of economic damages. In addition to any other remedy provided by law and after a jury award of economic damages, any party responsible for the payment of any part thereof may request a review of the reasonableness of the award by the court as follows:

1. Awards in excess of two hundred fifty thousand dollars before reduction for contributory fault and collateral source payments are subject to review for reasonableness under this Act.
2. The burden is on the moving party to establish that the amount of economic damage awarded was not reasonable in that it does not bear a reasonable relation to the economic damage incurred and to be incurred as proven by the party recovering the award.
3. If the court finds that the jury award of economic damages is unreasonable, the court shall reduce the award to reasonable economic damages.

SECTION 9. Periodic payments for continuing custodial care. If an injured party claims future economic damages for continuing institutional or custodial care that will be required for a period of more than two years, at the discretion of the court any party may request the trier of fact to make a special finding of the total amount awarded for this care, separate from other future economic damages, and if a separate award is made, any party may make periodic payments for this care in an amount approved by the court,

provided payment of the total award for this care is adequately secured. The adequacy of the periodic payments within the limit of the total award will be subject to review by the court from time to time, and upon the death of the injured person the obligation to provide for further continuing care shall terminate.

SECTION 10. Nondisclosure of reduction for collateral source payments. The jury may not be informed of the potential for the reduction of economic damages because of payments from collateral sources.

SECTION 11. 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 by clear and convincing evidence 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. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

SECTION 12. Post trial review. Motions for periodic payments, reductions of awards for contributory fault and collateral source payments, for review of the reasonableness of an award, and for setting the amount of exemplary damages, must be made to the judge who presided over the trial of the action, unless the judge is unable to act, in which case, the motion must be presented to a judge designated by the presiding judge of the district in which the trial was held. The motion must be made within ten days of the jury verdict, or order of the court, and if so made, judgment may not be entered until the motion has been ruled on.

SECTION 13. REPEAL. If this Act does not contain an expiration date, North Dakota Century Code sections 9-10-07 and 32-03-07 are hereby repealed.

SECTION 14. APPLICABILITY. This Act applies to claims for relief which accrue after the effective date of this Act.

* **SECTION 15. EXPIRATION DATE - SUSPENSION.** This Act is effective through June 30, 1993, and after that date is ineffective. North Dakota Century Code sections 9-10-07 and 32-03-07 are suspended from the effective date of this Act through June 30, 1993. Sections 9-10-07 and 32-03-07 as they existed on the day before the effective date of this Act are in effect on July 1, 1993.

Approved April 9, 1987
Filed April 9, 1987

* NOTE: Section 32-03-07 was also amended by section 1 of Senate Bill No. 2058, chapter 400.

CHAPTER 405

SENATE BILL NO. 2059
(Legislative Council)
(Interim Judiciary Committee)

POLITICAL SUBDIVISION LIABILITY TERMS

AN ACT to amend and reenact section 32-12.1-02 of the North Dakota Century Code, relating to the definitions concerning political subdivision liability.

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

SECTION 1. AMENDMENT. Section 32-12.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Claim" means any claim permitted by this chapter 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, board member, volunteer, or servant of a political subdivision, whether elected or appointed and whether or not compensated, but ~~shall~~ does 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~~ Includes 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 North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.
- b. ~~Shall Does~~ not include nor may it 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.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 406

HOUSE BILL NO. 1332
(Representatives Myrdal, A. Olson, R. Berg)
(Senators Vosper, Lodoen)

PUNITIVE DAMAGES LIMITATIONS

AN ACT to amend and reenact subsection 2 of section 32-12.1-03, subsection 3 of section 32-12.1-04, and section 32-12.1-05 of the North Dakota Century Code, relating to the award of damages against political subdivisions, the liability of political subdivision employees, and the statute of limitations for actions brought against political subdivisions.

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

SECTION 1. AMENDMENT. Subsection 2 of section 32-12.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The liability of political subdivisions under this chapter ~~shall be~~ is limited to a total of 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 regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. In no event may a political subdivision be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.~~

SECTION 2. AMENDMENT. Subsection 3 of section 32-12.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. No employee may be held liable in the employee's personal capacity for acts or omissions of the employee occurring within the scope of the employee's employment unless the acts or omissions constitute reckless or grossly negligent conduct, or willful or wanton misconduct. 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. The plaintiff in such an action bears the burden of proof to show by clear and convincing evidence that the employee was either acting outside the scope of the employee's employment or office or the employee was acting within the scope of employment in a reckless, grossly negligent, willful, or wanton manner. 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.

* SECTION 3. AMENDMENT. Section 32-12.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-05. Liability insurance policy coverage. ~~Except for punitive or exemplary damages for which a political subdivision may be held liable, an~~ An insurance policy or insurance contract purchased by a political subdivision pursuant to this chapter may provide coverage for liabilities established by this chapter and may provide such additional coverage as the governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter 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 must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision pursuant to any other provision of law.

Approved April 1, 1987
Filed April 2, 1987

* NOTE: Section 32-12.1-05 was also amended by section 1 of House Bill No. 1390, chapter 407.

CHAPTER 407

HOUSE BILL NO. 1390
(Wald)

POLITICAL SUBDIVISION LIABILITY INSURANCE

AN ACT to amend and reenact section 32-12.1-05 of the North Dakota Century Code, relating to the purchase of liability insurance by political subdivisions; and to repeal section 32-12.1-06 of the North Dakota Century Code, relating to the certification of political subdivision insurance to the commissioner of insurance.

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

* SECTION 1. AMENDMENT. Section 32-12.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-05. Liability insurance policy coverage. Except for punitive or exemplary damages for which a political subdivision may be held liable, an insurance policy or insurance contract purchased by a political subdivision pursuant to this chapter may provide coverage for liabilities established by this chapter and may provide such additional coverage as the governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter 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 must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision pursuant to any other provision of law and if premium savings will result therefrom, any insurance policies purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

SECTION 2. REPEAL. Section 32-12.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 1, 1987
Filed April 2, 1987

* NOTE: Section 32-12.1-05 was also amended by section 3 of House Bill No. 1332, chapter 406.

CHAPTER 408

SENATE BILL NO. 2100
(Committee on Judiciary)
(At the request of the Commission on Uniform State Laws)

UNIFORM ARBITRATION ACT

AN ACT to adopt the Uniform Arbitration Act, relating to the enforcement of voluntary written agreements to arbitrate disputes; to amend and reenact sections 24-02-28 and 60-06-06.1 of the North Dakota Century Code, relating to arbitration procedures; and to repeal chapter 32-29 of the North Dakota Century Code, relating to the arbitration of controversies.

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

SECTION 1. Validity of arbitration agreement. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract. Sections 1 through 20 also apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

SECTION 2. Proceedings to compel or stay arbitration.

1. On application of a party showing an agreement described in section 1, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application must be denied.
2. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, if in substantial and bona fide dispute, must be forthwith and summarily tried and the stay ordered if found for the

moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

3. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection 1, the application must be made therein. Otherwise and subject to section 18, the application may be made in any court of competent jurisdiction.
4. Any action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect to the severed issue only. If the application is made in an action or proceeding, the order for arbitration must include the stay.
5. An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated have not been shown.

SECTION 3. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, that method must be followed. In the absence of a method of appointment, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and the arbitrator's successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

SECTION 4. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by sections 1 through 20.

SECTION 5. Hearing. Unless otherwise provided by the agreement:

1. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed

promptly with the hearing and determination of the controversy.

2. The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.
3. The hearing must be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

SECTION 6. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under sections 1 through 20. A waiver of that right prior to the proceeding or hearing is ineffective.

SECTION 7. Witnesses - Subpoenas - Depositions.

1. The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and have the power to administer oaths. Subpoenas so issued must be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.
2. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
3. All provisions of law compelling a person under subpoena to testify are applicable.
4. Fees for attendance as witnesses are the same as provided in section 31-01-16 for witnesses in district courts.

SECTION 8. Award.

1. The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.
2. An award must be made within the time fixed by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the

expiration thereof. A party waives the objection that an award was not made within the time required unless that party notifies the arbitrators of an objection before delivery of the award to that party.

SECTION 9. Change of award by arbitrators. On application of a party or, if an application to the court is pending under section 11, 12, or 13, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subdivisions a and b of subsection 1 of section 13, or for the purpose of clarifying the award. The application must be made within twenty days after delivery of the award to the applicant. Written notice of the application must be given to the opposing party, stating that the opposing party shall serve objections to the application, if any, within ten days from the notice. The award so modified or corrected is subject to sections 11, 12, and 13.

SECTION 10. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

SECTION 11. Confirmation of an award. On application of a party, the court shall confirm an award, unless, within the time limits imposed by sections 1 through 20, grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 12 and 13.

SECTION 12. Vacating an award.

1. On application of a party, the court shall vacate an award if:
 - a. The award was procured by corruption, fraud, or other undue means;
 - b. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;
 - c. The arbitrators exceeded their powers;
 - d. The arbitrators refused to postpone the hearing after sufficient cause was shown to postpone it or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to section 5, as to prejudice substantially the rights of a party; or
 - e. There was no arbitration agreement and the issue was not adversely determined in proceedings under

section 2 and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

2. An application under this section must be made within ninety days after delivery of a copy of the award to the applicant, but, if predicated upon corruption, fraud, or other undue means, it must be made within ninety days after those grounds are known or should have been known.
3. In vacating the award on grounds other than stated in subdivision e of subsection 1, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of an agreement, by the court in accordance with section 3, or if the award is vacated on grounds set forth in subdivisions c and d of subsection 1, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 3. The time within which the agreement requires the award to be made applies to the rehearing and commences from the date of the order.
4. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

SECTION 13. Modification or correction of award.

1. Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:
 - a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
 - b. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
 - c. The award is imperfect in a matter of form, not affecting the merits of the controversy.
2. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

3. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

SECTION 14. Judgment or decree on award. On the granting of an order confirming, modifying, or correcting an award, judgment or decree must be entered in conformity with the order and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court.

SECTION 15. Judgment roll - Docketing.

1. On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:
 - a. The agreement and each written extension of the time within which to make the award.
 - b. The award.
 - c. A copy of the order confirming, modifying, or correcting the award.
 - d. A copy of the judgment or decree.
2. The judgment or decree may be docketed as if rendered in an action.

SECTION 16. Applications to court. Except as otherwise provided, an application to the court under sections 1 through 20 must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in a civil action.

SECTION 17. Court - Jurisdiction. The term "court" means any court of competent jurisdiction of this state. The making of an agreement described in section 1 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under sections 1 through 20 and to enter judgment on an award under the agreement.

SECTION 18. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county in which the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs.

SECTION 19. Appeals.

1. An appeal may be taken to the supreme court from any of the following:
 - a. An order denying an application to compel arbitration made under section 2.
 - b. An order granting an application to stay arbitration made under subsection 2 of section 2.
 - c. An order confirming or denying confirmation of an award.
 - d. An order modifying or correcting an award.
 - e. An order vacating an award without directing a rehearing.
 - f. A judgment or decree entered pursuant to sections 1 through 20.
2. The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action.

SECTION 20. Application. Sections 1 through 20 apply only to agreements made after June 30, 1987.

SECTION 21. AMENDMENT. Section 24-02-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-28. Procedure for arbitration. When After a board of arbitration shall have has been appointed, a submission in writing shall must be executed as provided in section 32-29-02 1 of this Act, except that such but the submission must provide for the entry of judgment upon the award by the district court of the county within in which the improvement, or some part thereof, involved in the contract is located. Such The county must be specified in such the submission. The submission must be executed by the commissioner. Thereupon After submission of the arbitration agreement the arbitration shall must proceed in accordance with the provisions of chapter 32-29 sections 1 through 20 of this Act.

* SECTION 22. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-06-06.1. Arbitration by public service commission - Appropriation. On agreement of all parties concerned, the parties may petition the public service commission to serve as an arbitrator of rights governed under this chapter. The commission shall serve as an arbitrator in accordance with chapter 32-29 sections 1 through 20 of this Act and the parties' rights of appeal are as limited by chapter 32-29 sections 1 through 20 of this Act. The parties requesting the

* NOTE: Section 60-06-06.1 was also amended by section 3 of House Bill No. 1347, chapter 737.

arbitration proceeding shall pay the expense of the proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain ~~such~~ those costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make and transmit to the parties an order for payment by registered ~~or certified~~ mail. ~~Upon order for payment, the parties, within~~ Within ten days after receipt of the order, the parties shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the public utility valuation revolving fund in the state treasury. All moneys transferred or deposited in the public utility valuation revolving fund for the payment of costs and expenses incurred under this section are hereby appropriated. These moneys are not subject to section 54-44.1-11.

SECTION 23. REPEAL. Chapter 32-29 of the North Dakota Century Code is hereby repealed.

Approved March 26, 1987
Filed March 30, 1987