

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 391

HOUSE BILL NO. 1078  
(Shaft)

### STATUTE OF LIMITATIONS DURING ABSENCE

AN ACT to amend and reenact section 28-01-32 of the North Dakota Century Code, relating to the statute of limitations when a person is absent from the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-01-32 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-32. Absence from state tolls limitations - Exception. If any person is out of this state at the time a claim for relief accrues against ~~him~~ that person, an action on such claim for relief may be commenced in this state at any time within the term limited in this chapter for the bringing of an action on such claim for relief after the return of such person into this state. If any person departs from and resides out of this state and remains continuously absent therefrom for the space of one year or more after a claim for relief has accrued against ~~him~~ that person, the time of ~~his~~ that person's absence may not be taken as any part of the time limited for the commencement of an action on such claim for relief. The provisions of this section, however, do not apply to the foreclosure of real estate mortgages by action or otherwise and do not apply if this state's courts have jurisdiction over a person during the person's absence.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 392

SENATE BILL NO. 2228  
(Committee on State and Federal Government)  
(At the request of the Public Employees Retirement System)

### RETIREMENT BENEFITS UNDER DOMESTIC RELATIONS ORDERS

AN ACT to create and enact a new section to chapter 39-03.1 and a new section to chapter 54-52 of the North Dakota Century Code, relating to payment of retirement benefits in accordance with domestic relations orders under the highway patrolmen's retirement system and public employees retirement system; and to amend and reenact sections 28-22-03.1 and 28-22-19 of the North Dakota Century Code, relating to property exempt from judicial process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 28-22-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional absolute exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Pensions; annuity policies or plans; life insurance policies which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay

\* NOTE: Section 28-22-03.1 was also amended by section 2 of House Bill No. 1096, chapter 224.

spousal support or child support, or a qualified domestic relations order pursuant to sections 3 and 4 of this Act. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

4. The debtor's right to receive, or property that is traceable to:
  - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
  - c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
  - d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

\* SECTION 2. AMENDMENT. Section 28-22-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 3 and 4 of this Act, a state agency, a political subdivision of the state, or a firemen's relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 65-13 as reparations for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Benefit payments to alternate payee under qualified domestic relations order.

\* NOTE: Section 28-22-19 was also amended by section 3 of House Bill No. 1096, chapter 224.

1. The board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the board shall notify the contributor and the named alternate payee of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a contributor, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the contributor. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the retirement system, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the contributor has not terminated eligible employment. A qualified domestic relations order must specify:
  - a. The name and the last known mailing address of the contributor and the name and mailing address of each alternate payee covered by the order;
  - b. The amount or percentage of the contributor's benefits to be paid by the plan to each alternate payee;
  - c. The number of payments or period to which the order applies; and
  - d. Each retirement plan to which the order applies.

SECTION 4. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Benefit payments to alternate payee under qualified domestic relations order.

1. The board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the board shall notify the participating member and the named alternate payee of its receipt of the qualified domestic relations order.

2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the public employees retirement system, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:
- a. The name and the last known mailing address of the participating member and the name and mailing address of each alternate payee covered by the order;
  - b. The amount or percentage of the participating member's benefits to be paid by the plan to each alternate payee;
  - c. The number of payments or period to which the order applies; and
  - d. Each retirement plan to which the order applies.

Approved March 17, 1989  
Filed March 17, 1989

## CHAPTER 393

HOUSE BILL NO. 1051  
(Legislative Council)  
(Interim Judicial Process Committee)

**MORTGAGE FORECLOSURE NOTICE OF SALE**

AN ACT to amend and reenact section 28-23-04 of the North Dakota Century Code, relating to the notice of sale in mortgage foreclosure actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-23-04. Sale of real property - Notice of sale - Contents. Before any real property or interest therein taken on execution ~~shall~~ may be sold, the officer making ~~such the sale must~~ shall give public notice of the time and place ~~thereof, in the manner following of the sale:~~

1. If a newspaper is printed in the county where the real property to be sold is situated, ~~such the notice must be given by advertisement in some a newspaper printed in such the county once a week for three successive weeks, the last publication to be at least ten days prior to the making of such the sale;~~ and
2. In case no newspaper is printed in ~~such the county~~, then the officer making the sale ~~must shall~~ cause ~~such the advertisement to be made by posting a copy of such the advertisement on the outer door of the courthouse or building wherein where the district court of the county was last held, and in five other public places in the county.~~

Except for parties who have an ownership interest in the real property subject to foreclosure of a mortgage under chapter 32-19 or 32-19.1, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days prior to the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

Approved March 31, 1989  
Filed March 31, 1989

## CHAPTER 394

HOUSE BILL NO. 1621  
(Representatives Brokaw, Schindler, Gerntholz)  
(Senators Hanson, Shea, Tallackson)

### HOMESTEAD PROTECTION

AN ACT to provide farmers the right to redeem homesteads separately from other property; to amend and reenact section 28-23-07 of the North Dakota Century Code, relating to waivers of right to designate lots at execution sale; to repeal chapter 194 of the 1987 Session Laws of North Dakota, relating to redemption of separate known lots or parcels of property; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration by legislative assembly. The legislative assembly declares that:

1. This state is suffering from a financial crisis in agriculture that affects the entire economic health of this state.
2. A large number of farm families are in economic distress and are being forced to leave their farms, abandon their investments, and move to other areas. This adversely affects the towns, business communities, and school districts in rural areas.
3. It is in the best interest of the state to protect farm families from the dislocation caused by the financial crisis in agriculture.
4. This Act is enacted pursuant to the police powers of the state in times of economic crisis and in accordance with section 22 of article XI of the Constitution of North Dakota, which requires the legislative assembly to adopt wholesome laws protecting homesteads.

SECTION 2. AMENDMENT. Section 28-23-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-23-07. Time and manner of sale - Designation of parcels or lots - Waiver in real estate mortgage of right to designate parcels or lots ineffective. All sales of property under execution must be made at public auction to the highest bidder, and conducted between the hours of nine o'clock a.m. and four o'clock p.m. After sufficient property has been sold to satisfy the execution no more ~~shall~~ may be sold. No sheriff or other officer, ~~nor his~~ or deputy of the sheriff or other officer, holding the execution or making the sale of property, either personal or real, ~~shall may~~ become a purchaser or be interested directly or indirectly in any purchase at ~~such the~~ sale, and every purchase so made ~~shall be considered is~~ fraudulent and void. ~~When~~ If the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in ~~such parcels as are~~ likely to bring the highest price, ~~and when.~~ If

the sale is of real property consisting of several known lots or parcels they, each must be sold separately. No waiver contained in a real estate mortgage of the mortgagor's right to designate known lots or parcels is effective for purposes of limiting a mortgagor's right to designate homestead property under section 4 of this Act. The judgment debtor, if present at the sale or under section 4 of this Act, may direct the order in which property, real or personal, shall must be sold, when such if the property consists of several known lots or parcels or of articles which can be sold to advantage separately, and the sheriff or other officer must follow such those directions.

SECTION 3. Separate redemption of homestead - Notice. In any proceeding to foreclose any mortgage upon agricultural property as defined in subsection 1 of section 57-02-01, including a proceeding under chapter 15-03, 15-08, 32-19, 32-19.1, or 35-22, the executing creditor shall notify the debtor that the debtor may redeem the property described in section 47-18-01 separately from the remaining property. The notice required in sections 32-19-20 and 35-22-03 must contain a statement substantially similar to the following:

WARNING: This creditor is seeking foreclosure on agricultural property that may contain your homestead. Under North Dakota law, you have the right to redeem the lot or parcel that contains your homestead separately from the remaining property that is being foreclosed upon, by paying the purchase price, plus interest and costs, within the redemption period, which is generally one year from the date of the sale. The purchase price is the price bid at the foreclosure sale for that lot or parcel. You should consult with an attorney so you do not lose these valuable rights. You must provide the sheriff and the register of deeds with an accurate legal description of the homestead you wish to redeem either at the sale or at least ten business days before the date of the scheduled sheriff's sale.

If the creditor is foreclosing by action, an additional copy of the notice must be served with a summons and complaint. If the creditor is foreclosing by advertisement, an additional copy of the notice must be served no later than forty-five days before the date of the scheduled sale. The notice must be served in the same manner as service of a summons and complaint.

SECTION 4. Designation of homesteads to be separately redeemed. The debtor may designate a reasonably compact contiguous area including the debtor's dwelling but not to exceed one hundred sixty acres [64.75 hectares] to be sold separately at the foreclosure sale by serving a copy of the legal description of the property claimed under this section on the sheriff, the register of deeds, and the parties to the foreclosure proceeding at least fifteen business days before the date of the scheduled sheriff's sale.

SECTION 5. Objection to designation of parcel. Any party to foreclosure proceedings may contest the designation of property to be separately redeemed by serving notice upon the parties and by filing with the court no later than five business days before the sale an application for a hearing concerning the area proposed to be separately redeemed. The court shall consider the adequacy of the legal description, the highest sale price produced for the designated and remaining parcels, and the reasonable use of the designated parcel by the debtor.



SECTION 6. Sale of homestead. Any sheriff who receives a designation of the legal description of property under section 4 of this Act shall offer and sell that parcel separately from the remaining property, unless otherwise ordered by the court under section 5 of this Act.

SECTION 7. Redemption of homestead designated by the debtor after foreclosure. If a debtor has had agricultural property foreclosed upon but the period of redemption has not expired and the debtor has not received the notice required by section 3 of this Act, the debtor may agree in writing with the purchaser of the agricultural property to redeem separately property described under section 4 of this Act which the debtor has designated. The agreement must be recorded and must include a legal description of the property redeemed and the amount to be paid to redeem the property.

SECTION 8. Rights of redemptioners or purchasers. No redemptioner or purchaser may subsequently redeem or purchase the property designated by the debtor under section 4 of this Act if the debtor exercises the right to redeem or purchase it.

SECTION 9. Right of certain debtors to purchase homesteads acquired by lenders. Any lender required under section 108 of the Agricultural Credit Act of 1987 [Pub. L. 100-233; 101 Stat. 1582; 12 U.S.C. 2219a] to offer a debtor the right to purchase property acquired by the lender shall offer the debtor the right to purchase the property in at least two separate parcels, one of which must be a compact contiguous tract of up to one hundred sixty acres [64.75 hectares] which includes the debtor's dwelling and does not unreasonably diminish the access, use, or value of the remaining property. Any payment made to the lender by the debtor to purchase a parcel must be considered in any determination of whether the parcel unreasonably diminishes the access, use, or value of the remaining property. The offer must be made prior to any lease or sale of the tract including the dwelling to a third party and, in addition, at the time as required or permitted by the Agricultural Credit Act of 1987, but duplicative offers are not required. Failure of a lender to offer a debtor the right to purchase the property under the Agricultural Credit Act of 1987 does not give the debtor a claim for relief under this section.

SECTION 10. REPEAL. Chapter 194 of the 1987 Session Laws of North Dakota is hereby repealed.

SECTION 11. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 395

HOUSE BILL NO. 1050  
(Legislative Council)  
(Interim Judicial Process Committee)

**MORTGAGE FORECLOSURE PROPERTY ABANDONMENT**

AN ACT to amend and reenact sections 28-24-11, 32-19-06, and 32-19-19 of the North Dakota Century Code, relating to abandonment of real property subject to mortgage foreclosure actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-24-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-11. Debtor entitled to rents during redemption period. The debtor under an execution or foreclosure sale of ~~his~~ the debtor's property ~~shall be~~ is entitled to the possession, rents, use, and benefit of the property sold from the date of ~~such~~ the sale until the expiration of the period of redemption ~~except as provided by section 32-19-19.~~

SECTION 2. AMENDMENT. Section 32-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19-06. What judgment ~~shall~~ must contain - Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises - Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court ~~shall have the power to may~~ render judgment for the amount found to be due at the time of the rendition of ~~said~~ the judgment, and the costs of the action, and ~~to may~~ order and decree a sale of the premises described in ~~such~~ the mortgage or contract ~~described, or such that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court shall have power to may~~ order and compel delivery of the possession of the premises to the purchaser at ~~such~~ the sale, but in no case ~~shall may~~ the possession of the premises ~~so~~ be delivered until after the expiration of one year from ~~such sale, and the one-year redemption period unless otherwise allowed by the court pursuant to section 32-19-19. The court shall direct, and the judgment shall must~~ provide, that during ~~such~~ one-year ~~the~~ redemption period the debtor or owner of the premises ~~shall be~~ is entitled to the possession, rents, use, and benefit of the real property sold ~~except as provided by section 32-19-19. The court under no circumstances shall have power to may~~ not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted ~~subsequent to after~~ July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if ~~he~~ the plaintiff has so

indicated in ~~his~~ the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. ~~Such~~ The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in ~~such~~ the separate action, may render a deficiency judgment against the party or parties personally liable, but ~~such~~ the deficiency judgment ~~shall~~ may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there ~~shall be~~ is no presumption that ~~such~~ the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises ~~shall~~ must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment ~~can~~ may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by ~~such~~ the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where ~~such~~ the fair value of the mortgaged premises ~~shall~~ is to be so determined ~~shall~~ must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At ~~such~~ that time and place ~~such~~ the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment ~~so~~ obtained ~~shall~~ must be enforced by execution as provided by law, except that no execution ~~shall~~ may be enforced after three years from the date of the rendition of ~~such~~ the deficiency judgment. The mortgagee or vendor or the successor in interest of either ~~shall~~ is not be permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if ~~such~~ the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which ~~such~~ the debt and the costs of the action exceed the fair value of the mortgaged premises. ~~Such~~ The fair value ~~shall~~ must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment ~~shall~~ must be enforced by execution as provided by law except that ~~no~~ ~~such~~ the execution ~~shall~~ may not be enforced after three years after the date of the rendition of ~~such~~ the judgment.

SECTION 3. AMENDMENT. Section 32-19-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19-19. Injury to property restrained - Abandoned real property. The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a mortgage thereon and until the expiration of the time allowed for redemption. If before the sheriff's sale the mortgagee or after the sheriff's sale the holder of the sheriff's certificate of sale reasonably believes that the property is abandoned, the mortgagee or holder of the sheriff's certificate may petition the court to determine abandonment. A notice of hearing must be sent by mail to the last known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing. If the court

determines that the real property is abandoned, the court may grant the mortgagee or holder of the sheriff's certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may proceed at the hearing to consider remedies to prevent waste. The provisions of this section concerning abandoned real property do not apply to agricultural property as defined by section 57-02-01.

Approved March 31, 1989  
Filed March 31, 1989

# CHAPTER 396

HOUSE BILL NO. 1032  
(Legislative Council)  
(Interim Administrative Rules Committee)

## ADMINISTRATIVE RULEMAKING

AN ACT to create and enact four new subdivisions to subsection 6 of section 28-32-01 and a new section to chapter 28-32 of the North Dakota Century Code, relating to what is excluded from a rule and not subject to the requirements of the Administrative Agencies Practice Act and to regulatory analysis of proposed rules; and to amend and reenact sections 28-32-02, 28-32-03, and 28-32-22 of the North Dakota Century Code, relating to administrative agency rulemaking procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Four new subdivisions to subsection 6 of section 28-32-01 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Interpretive statements, general statements of policy, or statements of agency organization, procedure, or practice.

Guidelines, manuals, brochures, pamphlets, and similar statements of policy intended to advise or guide the agency or the public concerning activities of the agency which are otherwise prescribed by rule or statute.

Statements of policy intended to implement federal statutes, rules, or requirements with which compliance by the agency is necessary to secure appropriated revenues, or to avoid the loss of otherwise available federal revenues.

A contract.

SECTION 2. AMENDMENT. Section 28-32-02 of the 1987 Supplement to the North Dakota Century code is hereby amended and reenacted to read as follows:

28-32-02. Rulemaking power of agency - Adoption deadlines - Notice Hearing notice - Emergencies - Attorney general's opinion.

1. Every administrative agency is authorized to adopt, and from time to time to amend or repeal, reasonable rules in conformity with the provisions of any statute administered or enforced by the agency, and to prescribe methods and procedure required in connection therewith.

2. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the office of the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own. Prior to the adoption, amendment, or repeal of any rule, the
3. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. In case of substantive rules, opportunity for the agency shall conduct an oral hearing must be granted if requested. The agency shall consider fully all written and oral submissions respecting the a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.
4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short explanation of the purpose of the proposed rule, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent and, in the case of a substantive rule, the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The notice must be mailed to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later of the date of the first publication of the notice or the date of filing with the office of the legislative council and the end of the period in which written or oral data, views, or arguments concerning the proposed rules will be received.
5. The legislative council shall establish a procedure whereby any person may request and receive mailed copies of all filings made by agencies pursuant to subsection 4. The legislative council may charge for the actual cost of providing copies of the filings.
6. If the agency finds that emergency rulemaking is necessary because of imminent peril to the public health, safety, or welfare, or because a delay in rulemaking is likely to cause a loss of revenues appropriated to support a duty imposed by law upon the agency, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by subsection 4. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is

substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule. The agency's finding, and a brief statement of the reasons therefor, must be filed with the office of the legislative council, along with any final rule adopted. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

7. Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when the rule merely repeats or paraphrases the text of the statute purported to be implemented by the rule. The attorney general may not approve any rule as to legality where the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable. The attorney general may suggest any revision or rewording of a rule to meet objections as to legality.

SECTION 3. A new section to chapter 28-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule if, within twenty days after the published notice of proposed rule adoption, a written request for the analysis is filed by the governor or an agency. The agency proposing the rule shall issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars.
2. The regulatory analysis must contain:
  - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
  - b. A description of the probable impact, including economic impact, of the proposed rule;
  - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
  - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.
3. Each regulatory analysis must include quantification of the data to the extent practicable.

4. The agency shall make the regulatory analysis available to any interested person who requests an opportunity to review the regulatory analysis. The agency may charge for the actual cost of providing copies of the regulatory analysis.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency proposing a rule. A writ of mandamus may issue under the terms and conditions provided for in chapter 32-34 upon the application of a party beneficially interested and aggrieved by an agency's failure to prepare and issue a required regulatory analysis. Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

SECTION 4. AMENDMENT. Section 28-32-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03. Filing of rules - Force and effect of rules - Form and style of rules - Rules invalid unless in compliance with chapter.

1. A copy of each rule adopted by an administrative agency, and the attorney general's opinion thereon, ~~shall~~ must be filed by the adopting agency with the office of the legislative council for publication in the North Dakota Administrative Code. ~~Except as provided in section 28-32-03.1, rules not published in the administrative code shall be invalid.~~
2. ~~Rules~~ Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council ~~shall~~ become effective the first day of the month after the month of publication as provided for in section 28-32-03.1, except that:
  - a. ~~If~~ if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective date.
  - b. ~~Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon approval by the attorney general, or at a stated date prior to the first day of the month after the month of publication in the code or code supplement, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefore shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.~~
3. Upon becoming effective, rules ~~shall~~ have the force and effect of law until amended or repealed by the agency ~~or~~ declared invalid by a final court decision, or determined repealed by the office of the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.



4. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which ~~shall~~ must be open to public inspection during office hours.
5. A rule is invalid unless adopted in substantial compliance with section 28-32-02. However, inadvertent failure to supply any person with a notice required by section 28-32-02 does not invalidate a rule. An action to contest the validity of a rule on the grounds of noncompliance with section 28-32-02 must be commenced within two years of the effective date of the rule.

SECTION 5. AMENDMENT. Section 28-32-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-22. Effective date. The procedure specified in this chapter shall apply to all claims and proceedings filed in or commenced by an administrative agency subsequent to ~~July 1, 1941~~ the effective date of this Act.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 397

HOUSE BILL NO. 1564  
(Murphy)

### PERJURY WARNING IN ADMINISTRATIVE HEARINGS

AN ACT to amend and reenact section 28-32-11 of the North Dakota Century Code, relating to duty of administrative hearing officers to warn parties of perjury.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-11. Administration of oaths - Parties to be advised of perjury provisions. The officer, special examiner, chairman, or acting chairman of an administrative agency before which a proceeding or hearing is held shall have the power to examine witnesses and records and to administer oaths to witnesses. At the time the officer conducting the proceeding or hearing administers the oath to a witness, the officer shall advise the witness of the provisions of subsection 1 of section 12.1-11-01 and of the maximum penalty for perjury.

Approved April 15, 1989  
Filed April 17, 1989