

JUDICIAL REMEDIES

CHAPTER 326

HOUSE BILL NO. 1336

(Representatives Delmore, Christenson, Kretschmar)
(Senators Heinrich, Redlin, W. Stenehjem)

CRITICAL INCIDENT STRESS MANAGEMENT IMMUNITY AND RECORDS

AN ACT to provide for immunity from liability and confidentiality of records and proceedings relating to critical incident stress management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Critical incident" means any event encountered by emergency service personnel within the scope of their employment which causes them to experience unusually strong emotional reactions that have the potential to interfere with their ability to perform their jobs or that may interfere with their personal lives.
2. "Critical incident stress debriefing" means the process of resolving the effects of critical incidents on emergency service personnel through a structured meeting with both psychological and educational components according to the model approved by the state department of health and consolidated laboratories.
3. "Critical incident stress management team" means those volunteers who are recognized by the state department of health and consolidated laboratories as members of an organized group that provides critical incident stress debriefing services on behalf of the state.
4. "Emergency service personnel" means individuals who provide emergency services to persons requiring medical aid, firefighting services, law enforcement assistance, or other emergency assistance. The term includes law enforcement officers, firefighters, rescue personnel, ambulance personnel, quick response personnel, emergency service dispatchers, nurses, physicians, and other emergency care providers.
5. "Mental health personnel" means psychiatrists, licensed psychologists, licensed social workers, licensed mental health counselors, nurses, members of the clergy, and other individuals approved by the state department of health and consolidated laboratories to function as members of a critical incident stress management team, who have completed appropriate training as approved by the department.

6. "Peer support personnel" means those members of a critical incident stress management team who are emergency service personnel and who have completed appropriate training approved by the state department of health and consolidated laboratories.

SECTION 2. Immunity from liability. Notwithstanding any other law, any member of a critical incident stress management team is immune from any civil liability for the member's activities in connection with critical incident stress debriefing services unless, based upon the member's level of training, the member's activities constitute gross negligence.

SECTION 3. Confidentiality of critical incident stress management team proceedings and records. Notwithstanding sections 44-04-18 and 44-04-19, all records and proceedings of a critical incident stress management team in connection with its critical incident stress debriefing activities are confidential. The records and proceedings are not subject to discovery or introduction into evidence in any action or proceeding involving the emergency service personnel in attendance at a debriefing and which arises out of the matters that are the subject of the debriefing. No person in attendance at a debriefing may be required to testify in any action or proceeding as to any evidence or other matters produced or presented during the debriefing. Information, documents, or records otherwise available from original sources are not immune from discovery because they were presented during a critical incident stress debriefing. Any person in attendance at a critical incident stress debriefing may testify as to matters within the person's knowledge, but the person may not testify about the specific events that occurred at a debriefing.

Approved March 10, 1995

Filed March 13, 1995

CHAPTER 327**HOUSE BILL NO. 1397**

(Representatives Tollefson, Wald, Walker)

AUTOMOBILE ACCIDENT DAMAGE LIABILITY

AN ACT to amend and reenact section 32-03.2-02.1 of the North Dakota Century Code, relating to automobile accident damage liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.2-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-03.2-02.1. Automobile accident damage liability. Notwithstanding section 32-03.2-02, in an action by any person to recover direct and indirect damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:

1. The party seeking damages is seeking property damages resulting from a two-party ~~automobile~~ motor vehicle accident;
2. The party seeking damages is seeking to recover direct physical property damages of not more than five thousand dollars and indirect damages not to exceed one thousand dollars; and
3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

Approved March 21, 1995

Filed March 21, 1995

CHAPTER 328**HOUSE BILL NO. 1338**

(Representatives Wardner, Maragos, Bernstein)
(Senators St. Aubyn, Wanzek)

LIENS ON WAGES

AN ACT to amend and reenact section 32-09.1-21 of the North Dakota Century Code, relating to liens on wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-21 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-21. Continuing lien on wages. A plaintiff may obtain a ~~sixty-day~~ ninety-day continuing lien on wages by garnishment. If a lien is to be obtained, the plaintiff shall mark on the caption of the garnishee summons "continuing lien" and all disclosure forms must include the following:

Garnishee will continue to hold the nonexempt portion of the defendant's earnings as they accrue through the last payroll period ending on or before ~~sixty~~ ninety days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

At the time of the expected termination of the lien, the plaintiff shall mail to garnishee an additional copy of the disclosure form upon which the garnishee within ten days shall make further disclosure.

Approved March 21, 1995
Filed March 21, 1995

CHAPTER 329**SENATE BILL NO. 2080**

(Legislative Council)

(Interim Sovereign Immunity Committee)

(Senators Nething, W. Stenehjem, Redlin)

(Representatives Kretschmar, Aarsvold)

CIVIL ACTIONS AGAINST STATE

AN ACT to create and enact a new subsection to section 21-10-06 and chapter 32-12.2 of the North Dakota Century Code, relating to investment of funds by the state investment board and to claims against the state; to amend and reenact sections 15-10-17, 26.1-21-10.1, 26.1-21-10.2, paragraph 2 of subdivision e of subsection 2 of section 26.1-36-09, sections 32-12-04, 32-12.1-02, 32-12.1-03, 32-12.1-05, 32-12.1-07, and 44-04-19.1 of the North Dakota Century Code, relating to claims against the state and exemptions from open meeting requirements and to group health policy and health service contract mental disorder coverage; to suspend sections 15-10-17.2, 32-12.1-15, and 54-14-03.2 of the North Dakota Century Code, relating to claims against the state; to repeal sections 15-10-17.2, 32-12.1-15, and 54-14-03.2 of the North Dakota Century Code, relating to claims against the state; to provide an appropriation; to provide for a legislative council study; to provide for applicability; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-17 of the North Dakota Century Code is amended and reenacted as follows:

15-10-17. Specific powers and duties of board of higher education. The state board of higher education ~~shall have~~ has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter, including ~~the following~~:

1. To appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the person or persons involved request that the meeting shall be open to other persons or the public.
2. To have supervision and control of the grounds, buildings, and all other property of such institutions, and to authorize such institutions to maintain confidential records containing personal information regarding their prospective, current, or former students or regarding patients at the medical center rehabilitation hospital at the university of North Dakota, with the information in such records subject to release by the institution only upon a court order or the express or implied consent of the student or patient involved. A prospective, current, or former student shall be deemed to have consented to the release of all records to a prospective

employer upon application for employment to that employer, provided the position is of such a nature as to require security clearance. The board may procure all necessary apparatus, instruments, and appurtenances for instruction in said schools within the limits of legislative appropriations therefor.

3. To adopt rules, regulations, and bylaws for the government of each of such institutions and of all the departments and branches thereof.
4. To determine the moral and educational qualifications of applicants for admission to the various courses of instruction and to prescribe rules, regulations, and bylaws for the admission of students, but no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of such institutions, and no sectarian or partisan test shall ever be allowed or exercised in the election of professors, teachers, or other officers of the institutions, or in the admission of students, or for any purpose whatsoever.
5. To prescribe rules and regulations for the management of the libraries, cabinets, museums, laboratories, and all other property of the institutions under its control, and for the care and preservation thereof, with suitable penalties and forfeitures by way of damages for their violation, which may be collected by action in the name of the board in any court having jurisdiction.
6. To prescribe the books or works to be used in the several courses of instruction, and to confer such degrees and to grant such certificates or diplomas for the work done as are usual or appropriate in similar institutions.
7. To confer upon the faculty, through bylaws, the power to suspend or expel students for misconduct or for other causes prescribed in such bylaws.
8. To act in consultation with the president of each institution to minister to the needs and proper development of each institution in harmony with the best interests of the people of the state, and to improve higher and technical education in the state.
9. To coordinate and correlate the work in the different institutions to prevent wasteful duplication and to develop cooperation among the institutions in the exchange of instructors and students.
10. To fix registration or matriculation fees and other incidental fees to be paid by students in the various institutions under its control or in any department thereof when not otherwise provided by law.
11. To fix and charge fees for instruction furnished in the professional schools and colleges and for extra studies.
12. To make recommendations in regard to needed legislation for the institutions under its control.
13. To establish a retirement program as an alternative to chapter 15-39.1 for employees of institutions under its control subject to the following guidelines:

- a. Benefits under the program shall be provided through annuity contracts purchased by the board but which shall become the property of the participants;
- b. The cost of the annuity contracts shall be defrayed by contributions made pursuant to rules of the state board of higher education;
- c. Eligible employees appointed before July 1, 1973, shall participate in the alternate retirement program only by their individual election. When the electing eligible employee is a member of the teachers' fund for retirement, the employee's assessments and employer's contributions together with interest credited at the current rate for one-year certificates then being paid by the Bank of North Dakota shall be transferred to the employee's account in the alternate program. Such election shall be made prior to July 1, 1980, and shall relinquish all rights the eligible employee or the employee's beneficiary may have to benefits provided in chapters 15-39 and 15-39.2;
- d. Employees of Bismarck state college and university of North Dakota - Lake Region coming under the jurisdiction of the board who are members of the teachers' fund for retirement may elect prior to July 1, 1985, to continue membership in the teachers' fund for retirement in lieu of the alternate retirement program. If an employee does not elect to continue membership in the teachers' fund for retirement, membership in that fund will terminate and the employee will become a member of the alternate retirement program established by the board effective July 1, 1985. An employee of the above-named colleges who becomes a member of the alternate retirement program may elect prior to July 1, 1985, to have the employee's assessments and employer's contributions in the teachers' fund for retirement with interest transferred by the board of trustees of the teachers' fund for retirement to the employee's account in the alternate retirement program. If an employee elects to transfer the employee's assessment and employer's contributions together with interest to the alternate retirement program, the employee relinquishes all rights the employee or the employee's beneficiary may have to benefits provided in chapters 15-39, 15-39.1, and 15-39.2; and
- e. Employees of institutions under the control of the state board of higher education who are members of the public employees retirement system and who become entitled to participate in the alternate retirement program are entitled to a special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, used by the retirement board of the public employees retirement system to purchase for that employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be

eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system prior to March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapter 54-52.

The board shall provide for the administration of the alternate retirement program and establish rules therefor consistent with the foregoing guidelines. Nothing in this subsection shall be construed in derogation of any existing retirement programs approved by the board.

14. ~~To insure itself and its employees and the officers, employees, and students, and any building or other property, real or personal, of any institution under its control against any loss or liability it deems advisable. If the board or any institution under its control purchases insurance pursuant to this subsection, the purchaser shall waive immunity to suit for liability only to the types of insurance coverage purchased and only to the extent of the policy limits of such coverage. For the public buildings, fixtures, and permanent contents therein described in chapter 26-1-22, insurance secured under this subsection shall be supplemental to and not in lieu of chapter 26-1-22. If a premium savings will result, policies purchased hereunder may be taken out for more than one year, but in no event beyond a period of five years. Policies may be secured in individual or master policy form.~~
- ~~15.~~ 15. To determine policy for purchasing by the institutions of higher education in coordination with the office of management and budget as provided by law.
- ~~16.~~ 15. To establish by rule an early retirement program for faculty and officers of the board as defined by the board. The limitations on severance pay pursuant to section 54-14-04.3 and on requiring the employee to pay contributions to continue on the state uniform group insurance program upon retirement or upon termination of employment pursuant to section 54-52.1-03 shall not apply to the early retirement program.
- ~~17.~~ 16. To adopt rules to protect the confidentiality of proprietary information received from sponsors of research conducted by the institutions as well as information generated by that research. No rule promulgated by the board may in any way limit or otherwise affect the applicability or implementation of any rule or regulation of the state department of health and consolidated laboratories. Each grant or contract involving confidential information must be explained in the institution's report to the board of grants and contracts received and must be reviewed at the board's public meeting.
- ~~18.~~ 17. To authorize and encourage institutions of higher education under its control to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and

industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.

SECTION 2. A new subsection to section 21-10-06 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

State risk management fund.

SECTION 3. AMENDMENT. Section 26.1-21-10.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-10.1. State employee - Defense.

1. ~~As used in~~ In this section, unless the context ~~or subject matter~~ otherwise requires:
 - a. ~~"Employee of the state" means all present or former officers or employees of the state or any of its agencies, departments, boards, or commissions; or persons acting on behalf of such agencies, departments, boards, or commissions in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.~~
 - b. ~~"Scope of office or employment" means the officer or state employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned to the employee by competent authority. Actions of an a state employee which constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct are not within the scope of the employee's office or employment for purposes of this chapter.~~
 - ~~e-~~ b. "State" means the state of North Dakota and includes each of its agencies, departments, boards, commissions, and offices.
 - c. "State employee" means every present or former officer or employee of the state or any person acting on behalf of a state agency, board, commission, or department in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.
2. The state of North Dakota shall defend any ~~state employee of the state~~ in connection with any civil claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring heretofore or hereafter during the employee's period of employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand, and if the actions complained of were within the scope of the employee's employment. The head of the agency, department, board, or commission that employs the state employee shall advise the attorney general as to whether it deems the employee's actions ~~which that~~ are the subject of the action to have been within the scope of the employee's employment. The determination of whether ~~an a state employee of the state~~ was acting within the scope of the employee's employment must be made by the attorney general. If the attorney general determines that the employee was acting within the scope of the employee's employment, the state shall provide the employee with a defense by or under the control of the attorney general or the attorney general's assistants. This

section ~~may~~ is not be construed as a waiver, limitation, or modification of any ~~existing~~ immunity or other defenses of the state or any of its ~~agencies, departments, commissions, boards,~~ officers, or employees, nor ~~may~~ does it be construed as creating create any causes of action against any of these entities. ~~Nothing provided by this section may be construed to be insurance within the meaning of section 32-12-1-15.~~

SECTION 4. AMENDMENT. Section 26.1-21-10.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-10.2. State employee defense - Expenses withdrawn by attorney general. The attorney general may withdraw from the state bonding fund those amounts, not exceeding a total of two hundred fifty thousand dollars, necessary to pay the costs of the defense of state employees of the state provided a defense under sections section 26.1-21-10.1, 26.1-21-10.2, and 32-12-1-15.

¹⁷⁵ **SECTION 5. AMENDMENT.** Paragraph 2 of subdivision e of subsection 2 of section 26.1-36-09 as created by section 1 of Senate Bill No. 2292, as approved by the fifty-fourth legislative assembly, is amended and reenacted as follows:

- (2) A person who is a licensed certified social worker qualified for third-party payment by the board of social work examiners on August 1, 1995, is exempt from subparagraphs c and d. Supervision under subparagraph c may be provided by a qualified clinical social worker, a licensed psychologist, or a licensed psychiatrist, but the preferred supervisor is the qualified clinical social worker.

SECTION 6. AMENDMENT. Section 32-12-04 of the North Dakota Century Code is amended and reenacted as follows:

32-12-04. How judgment collected. No execution ~~shall~~ may issue against the state on any judgment, but whenever a final judgment against the state ~~shall have~~ has been obtained in any action other than an action under chapter 32-12.2, the clerk shall make and furnish to the office of the budget a duly certified copy of ~~such~~ the judgment. After approval, and if funds have been appropriated therefor, the office of the budget, in due course, shall prepare and issue a warrant for the amount of such judgment and deliver the same to the person entitled thereto.

SECTION 7. AMENDMENT. Section 32-12.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted 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

¹⁷⁵ Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2292, chapter 289; section 2 of House Bill No. 1058, chapter 243; and section 2 of Senate Bill No. 2480, chapter 288.

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. The term 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. Includes all counties, townships, park districts, school districts, cities, public nonprofit corporations, 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. 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.
6. "State agency" means an agency, board, commission, bureau, office, department, and institution of state government "Public nonprofit corporation" means a nonprofit corporation that performs a governmental function and is funded, entirely or partly, by the state, a city, county, park district, school district, or township.

SECTION 8. AMENDMENT. Section 32-12.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-12.1-03. Liability of political subdivisions - Limitations.

1. Each political subdivision ~~shall be~~ is liable for money damages for injuries when the injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment or office under circumstances where the employee would be personally liable to a claimant in accordance with the laws of this state, or injury caused from some condition or use of tangible property, real or personal, under circumstances where the political subdivision, if a private person, would be liable to the claimant.
2. The liability of political subdivisions under this chapter 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 regardless of the number of political subdivisions, or

employees of such political subdivisions, which are involved in that occurrence. ~~In no event may a~~ A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.

3. A political subdivision is not liable for any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved be abused. Specifically, a political subdivision or an employee thereof is not liable for any claim ~~which~~ that results from:
 - a. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
 - b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
 - c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion be abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
 - d. The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this subsection does not provide immunity for damages resulting from acts of gross negligence.

Nothing contained in this This subsection may be construed to does not limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

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

- 6- 5. Notwithstanding the provisions of this chapter, a political subdivision or its insurance carrier is not liable for any claim arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.
- 7- 6. A political subdivision is not liable for any claim based on an act or omission in the designation, repair, operation, or maintenance of a minimum maintenance road if that designation has been made in accordance with sections 24-07-35 through 24-07-37 and if the road has been maintained at a level to serve occasional and intermittent traffic.

SECTION 9. AMENDMENT. Section 32-12.1-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-12.1-05. Liability insurance policy coverage. An insurance policy or insurance contract purchased by a political subdivision ~~or state agency~~ or a government self-insurance pool in which a political subdivision ~~or state agency~~ participates pursuant to this chapter may provide coverage for the types of liabilities established by this chapter and may provide such additional coverage as the ~~state agency or 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 ~~or state agency~~ pursuant to any other provision of law and if premium savings will result therefrom, any insurance ~~policies~~ policy purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

SECTION 10. AMENDMENT. Section 32-12.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-12.1-07. Authorized insurance.

1. The insurance authorized by this chapter may be provided by:
 - a. Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes.
 - b. An insurance company authorized to do business in this state which the commissioner has determined to be responsible and financially sound, considering the extent of the coverage required.
 - c. Any combination of the methods of obtaining insurance authorized in subdivisions a and b.
2. ~~Nothing in this~~ This chapter ~~shall be construed to~~ does not prohibit a political subdivision ~~or state agency~~ from uniting with other political subdivisions ~~and state agencies~~ in order to purchase liability insurance or to self-insure.

SECTION 11. Chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

32-12.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim for relief brought against the state or a state employee for an injury caused by the state or a state employee acting within the scope of the employee's employment whether in the state or outside the state.
2. "Injury" means personal injury, death, or property damage.
3. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.
4. "Personal injury" includes bodily injury, mental injury, sickness or disease sustained by a person and injury to a person's rights or reputation.
5. "Property damage" includes injury to or destruction of tangible or intangible property.
6. "Scope of employment" has the same meaning as defined in section 26.1-21-10.1.
7. "State" includes an agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the state.
8. "State employee" means a state employee as defined in section 26.1-21-10.1.
9. "State institution" means the state hospital, the developmental center at Grafton, the state penitentiary, the Missouri River correctional center, the North Dakota industrial school, the school for the blind, and the school for the deaf.

32-12.2-02. Liability of the state - Limitations - Statute of limitations.

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly.
2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and seven hundred fifty thousand dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the seven hundred fifty thousand dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget

for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered.

3. Neither the state nor a state employee may be held liable for any of the following claims:
 - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
 - b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid.
 - c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
 - d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
 - e. A claim resulting from the assessment and collection of taxes.
 - f. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
 - g. A claim resulting from any injury caused by a wild animal in its natural state.
 - h. A claim resulting from the condition of unimproved real property owned by the state.
 - i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
 - j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
 - k. A claim resulting from damage to the property of a patient or inmate of a state institution.
 - l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.

- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
 - n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- 4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.
 - 5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of the effective date of this Act.

32-12.2-03. State to be named in action - Personal liability of employees - Indemnification of claims and final judgments.

- 1. An action for an injury proximately caused by the alleged negligence, wrongful act, or omission of a state employee occurring within the scope of the employee's employment must be brought against the state.
- 2. A state employee is not personally liable for money damages for an injury when the injury is proximately caused by the negligence, wrongful act, or omission of the employee acting within the scope of employment.
- 3. A state employee may not 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. A state employee may be personally liable for money damages for an injury when the injury is proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment. The plaintiff in such an action bears the burden of proof to show by clear and convincing evidence that the employee was acting outside the scope of the employee's employment. The extent to which an employee may be personally liable under this section and whether the employee was acting within the scope of employment must be specifically stated in a final judgment.
- 4. Except for claims or judgments for punitive damages, the state shall indemnify and save harmless a state employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment of the employee.
- 5. A judgment in a claim against the state is a complete bar to any claim by the claimant, resulting from the same injury, against the employee whose act or omission gave rise to the claim.

32-12.2-04. Notice required.

- 1. A person bringing a claim against the state or a state employee for an injury shall present to the director of the office of management and budget within one hundred eighty days after the alleged injury is discovered or reasonably should have been discovered a written notice stating the time, place, and circumstances of the injury, the names of any state employees known to be involved, and the amount of compensation or other relief demanded. The time for giving the notice does not include the time during which a person injured is incapacitated by the

injury from giving the notice. If the claim is one for death, the notice may be presented by the personal representative, surviving spouse, or next of kin within one year after the alleged injury resulting in the death.

2. Within two working days after receipt of notice of a claim, the director of the office of management and budget shall forward the notice of a claim to the head of the state entity involved, the attorney general, and any other insurer providing coverage for that state entity. The director, in consultation with the head of the state entity involved and the attorney general, may settle claims covered by the state risk management fund. For all claims, a settlement made under this section is not valid unless it is supported by a claim in writing and is approved and signed by the attorney general.
3. The acceptance by the claimant of a settlement is final and conclusive on the claimant and constitutes a complete release of any claim against the state and the state employee whose act or omission gave rise to the claim.

32-12.2-05. Arbitration of claims. The director of the office of management and budget, in consultation with the head of the state entity involved and the attorney general, may agree to submit a claim covered by the state risk management fund to mediation or binding arbitration. If a claim is submitted to arbitration, the arbitrator must apply the limitations on liability imposed under this chapter in deciding the claim.

32-12.2-06. Liability insurance - Reinsurance. Upon approval of the director of the office of management and budget, an entity of the state may participate in a government self-insurance pool or may purchase insurance against liability of the entity and its employees for damages resulting from claims under this chapter. The director shall limit participation in government self-insurance pools and the purchase of insurance to exposures determined to cause an excessive financial risk to the state risk management fund including exposures reasonably expected to deplete the fund and have a significant detrimental impact on the state's budget. The insurance may be provided by an insurance company authorized to do business in this state which the commissioner of insurance has determined to be responsible and financially sound, considering the extent of the coverage required, or coverage may be provided by a government self-insurance pool. If a premium savings will result and the director of the office of management and budget approves, the insurance policy or memorandum of coverage may be in force from one through three years from the date of issue. The director may procure an excess loss reinsurance contract for the state.

32-12.2-07. Risk management fund - Appropriation.

1. The director of the office of management and budget shall implement and administer a program of self-insurance for the state through the establishment of a risk management fund. Each entity of the state shall participate in the program by contributing the appropriate share of its costs as determined by the director.
2. The state risk management fund is a special fund in the state treasury administered by the director of the office of management and budget. The fund is a revolving fund consisting of contributions from participating state entities and other appropriations by the legislative assembly. The state investment board shall invest the fund in

accordance with chapter 21-10. Funds received as contributions from state entities and interest and income received on investments are hereby appropriated for the purposes of the fund. Section 54-44.1-11 does not apply to the fund.

3. The director of the office of management and budget shall:
 - a. Review the state's exposure to various types of potential risks in consultation with affected state entities and advise state entities as to the reduction of risk and fiscal management of those losses.
 - b. Be responsible for statewide risk management coordination, evaluation of funding and insuring alternatives, and the approval of all insurance purchases or government self-insurance pool participation in consultation with affected state entities.
 - c. Identify methods to eliminate redundant efforts in the management of state risk management and insurance programs.
 - d. Administer the state risk management fund or contract for a third-party administrator.
4. The director of the office of management and budget may request bids from insurance carriers or government self-insurance pools or negotiate with insurance carriers and government self-insurance pools and may enter into contracts of insurance with carriers or memorandums of coverage with government self-insurance pools that are best qualified to underwrite and service insurance or coverage programs for the state through the risk management fund.

32-12.2-08. Duties of director of the office of management and budget. The director of the office of management and budget is responsible for determining the specifications for liability insurance or coverage for the state. The director shall require an insurance company or government self-insurance pool providing coverage for the state to guarantee that its policy or memorandum of coverage provides minimum coverages pursuant to required specifications.

32-12.2-09. Insurance no waiver of immunity. No purchase of insurance or participation in a government self-insurance pool by the state may be construed as a waiver of any immunity to suit.

32-12.2-10. Eleventh Amendment immunity preserved. This chapter does not waive the state's immunity under the Eleventh Amendment to the United States Constitution in any manner, and this chapter may not be construed to abrogate that immunity.

SECTION 12. AMENDMENT. Section 44-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

44-04-19.1. Open records and open meetings - Exemptions for attorney work product and attorney consultation.

1. Attorney work product is exempt from ~~the provisions of~~ section 44-04-18. Attorney work product and copies thereof shall not be open to public inspection, examination, or copying unless specifically made public by the public agency receiving such work product.

2. Attorney consultation is exempt from ~~the provisions of~~ section 44-04-19. That portion of a meeting of a public agency during which an attorney consultation occurs may be closed, by a majority vote of the public agency in an open meeting for the purpose of having the attorney consultation. The remainder of the meeting, where no attorney consultation occurs, is an open meeting unless a specific exemption is otherwise applicable.
3. "Attorney work product" means any document or record ~~which~~ that:
 - a. Was prepared by an attorney representing a public agency or prepared at such an attorney's express direction;
 - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the agency; and
 - c. Was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings.
4. "Attorney consultation" means any discussion between a public agency and its attorney in instances in which the public agency seeks or receives the attorney's advice in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings or concerning pending civil or criminal litigation or pending adversarial administrative proceedings.
5. "Public agency" means all public or governmental bodies, boards, bureaus, commissions, or agencies of the state, or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds or expending public funds.
6. "Adversarial administrative proceedings" include only those administrative proceedings where the administrative agency acts as a complainant or respondent in an adverse administrative proceeding. This term does not refer to those instances where the administrative agency acts in its own rulemaking capacity.
7. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public agency.

SECTION 13. SUSPENSION. Section 15-10-17.2 of the North Dakota Century Code and sections 32-12.1-15 and 54-14-03.2 of the 1993 Supplement to the North Dakota Century Code are suspended upon the effective date of this Act. If Senate Concurrent Resolution No. 4014, as adopted by the fifty-fourth legislative assembly, is approved by the voters, sections 15-10-17.2, 32-12.1-15, and 54-14-03.2 are suspended only through July 31, 1997, and on August 1, 1997, those sections become effective as they existed immediately before the effective date of this Act.

SECTION 14. REPEAL. Section 15-10-17.2 of the North Dakota Century Code and sections 32-12.1-15 and 54-14-03.2 of the 1993 Supplement to the North Dakota Century Code are repealed.

SECTION 15. SEVERABILITY INTERPRETATION. Section 1-02-20 applies to chapter 32-12.2.

SECTION 16. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the state risk management fund in the state treasury, not otherwise appropriated, to the office of management and budget for the purpose of administering the state risk management program and providing for the defense of the state or an employee of the state pursuant to chapter 32-12.2, for the period beginning with the effective date of this Act and ending June 30, 1997, as follows:

Risk management	<u>\$1,207,000</u>
Total special funds appropriation	<u>\$1,207,000</u>

SECTION 17. APPROPRIATION. The following sums, or so much of the sums as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury or from federal or other funds as indicated to the state agencies and institutions named for the purpose of paying liability insurance premiums for the period beginning with the effective date of this Act and ending June 30, 1997:

AGENCY OR INSTITUTION	GENERAL FUND	SPECIAL FUNDS	TOTAL
Governor	\$ 5,808		\$ 5,808
Secretary of state	8,068		8,068
Office of management and budget	39,238		39,238
Information services division		\$ 44,206	44,206
State auditor	11,287	5,559	16,846
Central services	992	6,638	7,630
State treasurer	3,442		3,442
Attorney general	52,469	9,259	61,728
Tax commissioner	50,342		50,342
Office of administrative hearings	552	940	1,492
Retirement and investment office		6,132	6,132
Public employees retirement system		5,578	5,578
Legislative council	1,000		1,000
Supreme court	20,220		20,220
Judicial conduct commission	2,152		2,152
Trial courts	81,748		81,748
Department of public instruction	19,232	23,506	42,738
State library	9,520		9,520
School for the deaf	16,556		16,556
School for the blind	11,278		11,278
State board for vocational and technical education	4,980	5,184	10,164
North Dakota university system office	6,390		6,390
Bismarck state college	34,718		34,718
University of North Dakota - Lake Region	17,944		17,944
University of North Dakota - Williston	3,874		3,874
University of North Dakota	246,196		246,196
University of North Dakota	77,798	91,328	169,126

medical center			
North Dakota state university	136,744		136,744
North Dakota state college of science	60,128		60,128
Dickinson state university	21,534		21,534
Mayville state university	9,044		9,044
Minot state university	77,240		77,240
Valley city state university	31,766		31,766
North Dakota state university - Bottineau	6,720		6,720
North Dakota forest service	7,026		7,026
Department of health and consolidated laboratories	85,779	85,779	171,558
Indian affairs commission	560		560
Department of veterans affairs	3,024		3,024
Children's services	646		646
coordinating committee			
Department of human services	410,711	45,635	456,346
Protection and advocacy project	13,766		13,766
Insurance commissioner		16,098	16,098
Industrial commission	19,820	2,962	22,782
Labor commissioner	2,582		2,582
Public service commission	10,008	5,878	15,886
Department of banking and financial institutions		10,324	10,324
Securities commissioner	3,012		3,012
Bank of North Dakota		67,766	67,766
North Dakota housing finance agency		16,458	16,458
North Dakota mill and elevator association		53,350	53,350
Job service North Dakota		144,662	144,662
Workers compensation bureau		50,178	50,178
Highway patrol		19,908	19,908
State radio communications	9,242		9,242
Division of emergency management	1,807	7,227	9,034
Department of corrections and rehabilitation	171,344	37,612	208,956
Adjutant general	22,133	51,643	73,776
Department of economic development and finance	9,680		9,680
Agriculture department	10,467	3,489	13,956
Soil conservation committee	1,936		1,936
Agricultural products utilization commission	323	323	646
Seed department		7,400	7,400
Upper great plains transportation institute	542	3,330	3,872
North Dakota state university extension service	44,531	29,687	74,218
Northern crops institute	2,582		2,582
Main research station	70,950	38,204	109,154
Dickinson research center	4,116		4,116
Central grasslands research center	1,616		1,616
Hettinger research center	2,453	129	2,582

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Langdon research center	1,962	218	2,180
North central research center	1,936		1,936
Williston research center	2,582		2,582
Carrington research center	3,415	1,263	4,678
Agronomy seed farm		970	970
Land reclamation research center		6,698	6,698
State historical society	12,031	1,337	13,368
Council on the arts	1,421	355	1,776
Game and fish department		26,970	26,970
Department of tourism	3,226		3,226
Department of parks and recreation	8,688		8,688
State water commission	34,534		34,534
Department of transportation		<u>635,616</u>	<u>635,616</u>
Total	<u>\$2,049,431</u>	<u>\$1,569,799</u>	<u>\$3,619,230</u>

SECTION 18. PENDING CASES. A state agency may pay, from its 1995-97 biennium operating budget appropriation, settlements or judgments resulting from court decisions affecting state agency liability for claims accruing before the effective date of this Act, subject to written approval of the attorney general, for the biennium beginning July 1, 1995, and ending June 30, 1997. Any state agency that pays a settlement or judgment may request, if necessary, a deficiency appropriation from the fifty-fifth legislative assembly.

SECTION 19. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the impact of the North Dakota supreme court decision abolishing the doctrine of sovereign immunity during the 1995-96 interim.

SECTION 20. APPLICABILITY. This Act applies only to claims that accrue after the effective date of this Act. If this Act becomes ineffective pursuant to section 22 of this Act, any claim that accrues during the period during which the Act is effective is governed by this Act. If this Act becomes ineffective, any funds in the state risk management fund must be maintained in the fund to pay any judgments or settled claims after the Act becomes ineffective.

SECTION 21. EFFECTIVE DATE. Sections 1 through 4, 6 through 13, and 15 through 20 of this this Act become effective fifteen days after the adjournment of the fifty-fourth legislative assembly. Section 5 becomes effective August 1, 1995. If Senate Concurrent Resolution No. 4014, as approved by the fifty-fourth legislative assembly, is not approved by the voters, section 14 of this Act becomes effective upon the official certification by the secretary of state that the measure was not approved.

SECTION 22. EXPIRATION DATE. If Senate Concurrent Resolution No. 4014 is approved by the fifty-fourth legislative assembly and the measure is approved by the voters, sections 1 through 4, 6 through 11, and section 15 of this Act are effective through July 31, 1997, and after that date are ineffective.

SECTION 23. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 1995
 Filed April 18, 1995

CHAPTER 330

SENATE BILL NO. 2352

(Senators Nething, Grindberg, Mushik, Robinson)

COMMERCIAL REAL ESTATE DEFICIENCY
JUDGMENTS

AN ACT to amend and reenact sections 32-19-06.1 and 32-19.1-07 of the North Dakota Century Code, relating to deficiency judgments on commercial real estate loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19-06.1. Deficiency judgments on commercial real property. Notwithstanding any other provision of law, a person mortgagee holding a mortgage on commercial real property may obtain a deficiency judgment against the mortgagor of commercial real property contracted for after August 1, 1993, and any successor in interest of the mortgagor who has assumed the debt secured by the mortgage. In an action for involving the foreclosure of a mortgage on commercial real property, the plaintiff foreclosing party shall state in the complaint its pleading whether a deficiency judgment will be sought, identify the defendant or defendants parties claimed to be personally liable for the amount due payment of the debt secured by the mortgage being foreclosed, and demand a deficiency judgment against those defendant parties. Within ten ninety days after filing and serving the summons and complaint on the defendants the later of the filing or service of the pleading seeking the foreclosure of a mortgage, the plaintiff party seeking a deficiency judgment on commercial real property shall file with the clerk of district court a request notice for an appraisal of the real property by a licensed or certified appraiser and serve mail a copy of the request upon the defendants to the parties claimed to be liable for a deficiency, at their last known residences or business addresses by first-class mail. The request notice must contain the plaintiff's foreclosing party's agreement to pay the cost of the appraisal, which must be included as a cost allowed to the plaintiff the foreclosing party if judgment is entered granting foreclosure. Upon the filing of the request notice, the plaintiff foreclosing party shall arrange for an appraisal of the property and shall notify the defendants, at their last known address, of the request for an appraisal. Within not more than twenty days after completion of the appraisal, the appraiser shall provide to the plaintiff foreclosing party and file with the clerk of court a written report indicating the present fair market value of the commercial real property. The plaintiff foreclosing party shall also serve mail copies of the report on to the defendants named in the complaint parties claimed to be personally liable to their last known residences or business addresses by first-class mail. Within fifteen days of the filing and serving later of the filing or mailing of the report of the foreclosing party's appraisal, any party may file a notice of intention to obtain an additional appraisal to be conducted by a licensed or certified appraiser at the party's own expense. The additional appraisal report must be served upon the foreclosing party and filed within thirty days of the filing of the notice of intention appraisal and must be considered, with other appraisal reports filed, in the determination by the court of the present fair market value of the property which determination as to fair market value must be made as of the date of the foreclosing party's appraisal. At the time

of the entry of the judgment, the court shall include in its findings of fact the ~~present~~ fair market value of the property and, if the ~~present~~ fair market value is less than the amount found to be due the plaintiff foreclosing party, identify the persons who are liable for any deficiency remaining after a sheriff's sale of the property pursuant to foreclosure judgment. The foreclosure judgment must be docketed as a money judgment against the persons personally liable in an amount equal to the balance then due and owing on the mortgage, plus costs taxed by the court. Upon entry of an order confirming the sheriff's sale in the foreclosure, the clerk of court shall note the amount to be credited ~~thereon~~ on the foreclosure judgment, which credit must be at least the amount bid at the sheriff's sale, less the cost of the sheriff's sale, which credit may not in any event be less than the ~~present~~ fair market value established by the court. However, only the amount actually paid in excess of the foreclosure judgment may constitute surplus payable to the debtor pursuant to section 28-23-09. At any time after the ~~sheriff's sale and final entry of judgment~~, the plaintiff may order confirming sale, the clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable for the deficiency. The foreclosing party may thereafter pursue the same remedies to collect the deficiency judgment as those are available to collect other money judgments. The amount collectible must include deficiency judgment must be for the entire amount found to be due the plaintiff foreclosing party in the foreclosure judgment, together with interest on the amount of the foreclosure judgment at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court upon entry of the order confirming the sheriff's sale. The deficiency judgment must bear interest at the same rate as the foreclosure judgment. As used in this section, "commercial real property" means any real property except residential real property consisting of fewer than three residential units and agricultural property, whose primary use is determined as of the time the mortgage is executed, as defined by section 57-02-01. As used in this section, "fair market value" means the highest price that commercial real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment, reduced by the value of any liens paramount to the lien of the foreclosing party. In addition to the appraisals filed by the parties, the court, in its determination of the fair market value of the property, may consider affidavits from the parties or other proof of paramount liens and other matters that may affect the value.

The provisions of this section are not available unless the promissory note obligation and mortgage executed by the parties named as defendants in an action for a deficiency judgment contains upon which the deficiency liability is based contain language located immediately above the signatures of the parties advising them that the lender mortgagee has the right to proceed to obtain and collect a deficiency judgment ~~against the parties personally liable~~, together with foreclosure of the real property mortgaged under applicable laws.

SECTION 2. AMENDMENT. Section 32-19.1-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19.1-07. No deficiency judgment allowed. When any mortgage has been foreclosed under this chapter, the mortgagee or any party claiming by, through, or under said mortgagee shall not be entitled to any judgment for deficiency, except as provided in section 32-19-06.1. However, notwithstanding other provisions of state law, where a promissory note or other obligation and a mortgage, other than a first mortgage, upon real estate have been given to secure a debt contracted on or after August 1, 1993, a mortgagee may bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note or other obligation. The provisions of this section

allowing a mortgagee to bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note or other obligation apply only to residential real property consisting of four or fewer residential units.

Any promissory note ~~taken by a lender in connection with or other obligation secured by a second mortgage on real estate, other than a first mortgage,~~ must contain the following notice or direct action is not allowed:

"This ~~promissory note~~ obligation may be the basis for a personal action against the promisor or promisors in addition to other remedies allowed by law."

The notice must appear in printed or typed boldface capital letters within the body of the promissory note or other instrument evidencing the obligation.

Approved April 4, 1995
Filed April 4, 1995

CHAPTER 331**HOUSE BILL NO. 1272**

(Representatives Keiser, Clayburgh, Nicholas, Mahoney)

**PROPERTY INSPECTIONS FOR ENVIRONMENTAL
DAMAGE**

AN ACT to amend and reenact subsection 3 of section 32-40.1-02 of the North Dakota Century Code, relating to visual inspections of lender-owner property for environmental damage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 32-40.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A lender-owner or representative is not by virtue of becoming the owner of property liable for any third-party liability arising from contamination or pollution emanating from the property during the period of ownership so long as, and to the extent that:
 - a. The lender-owner or representative does not knowingly cause new contamination or pollution or does not knowingly allow others to cause new contamination or pollution;
 - b. The lender-owner has, in good faith, caused ~~an environmental professional~~ an individual, including an officer or employee of the lender-owner, possessing the requisite knowledge and experience to conduct a visual inspection of the property to determine the presence and condition of hazardous wastes or substances and obvious contamination or pollution; and
 - c. The lender-owner found by the enforcing agency to be in noncompliance with federal or state laws takes steps to assure compliance with applicable laws.

Approved March 14, 1995
Filed March 14, 1995

CHAPTER 332**SENATE BILL NO. 2101**

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

**UNIFORM CORRECTION OR CLARIFICATION OF
DEFAMATION ACT**

AN ACT to adopt the Uniform Correction or Clarification of Defamation Act; and to repeal section 14-02-08 of the North Dakota Century Code, relating to libel suits against newspapers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act:

1. "Defamatory" means tending to harm reputation.
2. "Economic loss" means special, pecuniary loss caused by a false and defamatory publication.
3. "Person" includes any legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

SECTION 2. Scope. This Act applies to any claim for relief, however characterized, for damages arising out of defamation caused by the false content of a publication that is published on or after the effective date of this Act. This Act applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

SECTION 3. Request for correction or clarification.

1. A person may maintain an action for defamation only if the person has made a timely and adequate request for correction or clarification from the defendant or the defendant has made a correction or clarification.
2. A request for correction or clarification is timely if made within the period of limitation for commencement of an action for defamation. However, a person who, within ninety days after knowledge of the publication, fails to make a good faith attempt to request a correction or clarification may recover only provable economic loss.
3. A request for correction or clarification is adequate if the request:
 - a. Is made in writing and reasonably identifies the person making the request;
 - b. Specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
 - c. Alleges the defamatory meaning of the statement;

- d. Specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and
 - e. States that the alleged defamatory meaning of the statement is false.
4. In the absence of a previous adequate request, service of a summons and complaint stating a claim for relief for defamation and containing the information required in subsection 3 constitutes an adequate request for correction or clarification.
 5. The period of limitation for commencement of a defamation action is tolled during the period allowed in section 6 of this Act for responding to a request for correction or clarification.

SECTION 4. Disclosure of evidence of falsity. A person who has been requested to make a correction or clarification may ask the requester to disclose reasonably available information material to the falsity of the allegedly defamatory statement. If a correction or clarification is not made, a person who unreasonably fails to disclose the information after a request to do so may recover only provable economic loss. A correction or clarification is timely if published within twenty-five days after receipt of information disclosed under this section or forty-five days after receipt of a request for correction or clarification, whichever is later.

SECTION 5. Effect of correction or clarification. If a timely and sufficient correction or clarification is made, a person may recover only provable economic loss, as mitigated by the correction or clarification.

SECTION 6. Timely and sufficient correction or clarification.

1. A correction or clarification is timely if it is published before, or within forty-five days after, receipt of a request for correction or clarification, unless the period is extended under section 4 of this Act.
2. A correction or clarification is sufficient if it:
 - a. Is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;
 - b. Refers to the statement being corrected or clarified and:
 - (1) Corrects the statement;
 - (2) In the case of defamatory meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or
 - (3) In the case of a statement attributed to another person, disclaims an intent to assert the truth of the statement; and
 - c. Is communicated to the person who has made a request for correction or clarification.
3. A correction or clarification is published in a medium reasonably likely to reach substantially the same audience as the publication complained

of if it is published in a later issue, edition, or broadcast of the original publication.

4. If a later issue, edition, or broadcast of the original publication will not be published within the time limits established for a timely correction or clarification, a correction or clarification is published in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:
 - a. It is timely published in a reasonably prominent manner in another medium likely to reach an audience reasonably equivalent to the original publication or if the parties cannot agree on another medium, in the newspaper with the largest general circulation in the region in which the original publication was distributed;
 - b. Reasonable steps are taken to correct undistributed copies of the original publication, if any; and
 - c. It is published in the next practicable issue, edition, or broadcast, if any, of the original publication.
5. A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient.

SECTION 7. Challenges to correction or clarification or to request for correction or clarification.

1. If a defendant in an action governed by this Act intends to rely on a timely and sufficient correction or clarification, the defendant's intention to do so, and the correction or clarification relied upon, must be set forth in a notice served on the plaintiff within sixty days after service of the summons and complaint or ten days after the correction or clarification is made, whichever is later. A correction or clarification is deemed to be timely and sufficient unless the plaintiff challenges its timeliness or sufficiency within twenty days after the notice is served.
2. If a defendant in an action governed by this Act intends to challenge the adequacy or timeliness of a request for correction or clarification, the defendant must set forth the challenge in a motion to declare the request inadequate or untimely served within sixty days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial.

SECTION 8. Offer to correct or clarify.

1. If a timely correction or clarification is no longer possible, the publisher of an alleged defamatory statement may offer, at any time before trial, to make a correction or clarification. The offer must be made in writing to the person allegedly defamed by the publication and:
 - a. Contain the publisher's offer to publish, at the person's request, a sufficient correction or clarification and to pay the person's reasonable expenses of litigation, including attorney's fees, incurred before publication of the correction or clarification; and

- b. Be accompanied by a copy of the proposed correction or clarification and the plan for its publication.
2. If the person accepts in writing an offer to correct or clarify made pursuant to subsection 1, the person is barred from commencing an action against the publisher based on the statement or if an action has been commenced, the court shall dismiss the action against the defendant with prejudice after the defendant complies with the terms of the offer.
3. A person who does not accept an offer made in conformance with subsection 1 may recover in an action based on the statement only damages for provable economic loss and reasonable expenses of litigation, including attorney's fees, incurred before the offer, unless the person failed to make a good faith attempt to request a correction or clarification in accordance with subsection 2 of section 3 of this Act or failed to disclose information in accordance with section 4 of this Act.
4. On request of either party, a court shall promptly determine the sufficiency of the offered correction or clarification.
5. The court shall determine the amount of reasonable expenses of litigation, including attorney's fees, specified in subsections 1 and 3.

SECTION 9. Scope of protection. A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher. However, a correction or clarification that is sufficient only under paragraph 3 of subdivision b of subsection 2 of section 6 of this Act does not constitute a correction or clarification made by the person to whom the statement is attributed.

SECTION 10. Admissibility of evidence of correction or clarification.

1. The fact of a request for correction or clarification under this Act, the contents of the request, and its acceptance or refusal are not admissible in evidence at trial.
2. The fact that a correction or clarification under this Act was made and the contents of the correction or clarification are not admissible in evidence at trial except in mitigation of damages pursuant to section 5 of this Act. If the fact that a correction or clarification was made or the contents of the correction or clarification are received in evidence, the fact of the request may also be received.
3. The fact of an offer of correction or clarification, or the fact of its refusal, and the contents of the offer are not admissible in evidence at trial.

SECTION 11. REPEAL. Section 14-02-08 of the North Dakota Century Code is repealed.

Approved April 5, 1995
Filed April 6, 1995