CHAPTER 32-12.1
GOVERNMENTAL LIABILITY

32-12.1-01. Legislative intent.

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

32-12.1-02. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim permitted by this chapter brought against a political subdivision for an injury caused by a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office.
2. "Commissioner" means the insurance commissioner.
3. "Employee" means any officer, employee, board member, volunteer, or servant of a political subdivision, whether elected or appointed and whether or not compensated. 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.
5. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person, and injury to a person's rights or reputation.
6. "Political subdivision":
   a. Includes all counties, townships, park districts, school districts, cities, public nonprofit corporations, administrative or legal entities responsible for administration of joint powers agreements, 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.
7. "Property damage" includes injury to or destruction of tangible or intangible property.
8. "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.

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

1. Each political subdivision 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 in which 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 in which the political subdivision, if a private person, would be liable to the claimant. The enactment of a law, rule, regulation, or ordinance to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the political subdivision, its employees, or its agents, if that duty would not otherwise exist.
2. The liability of political subdivisions under this chapter is limited to a total of five hundred thousand dollars per person and two million dollars for any number of claims arising from any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. 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 or a political subdivision employee may not be held liable under this chapter for any of the following claims:
   a. A claim based upon an act or omission of a political subdivision employee exercising due care in the execution of a valid or invalid statute or regulation.
   b. 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.
   c. 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.
   d. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion is 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.
   e. Injury directly or indirectly caused by a person who is not employed by the political subdivision.
   f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:
      (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.
      (2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.
      (3) Providing or failing to provide law enforcement services in the ordinary course of a political subdivision's law enforcement operations.
      (4) Providing or failing to provide fire protection services in the ordinary course of a political subdivision's fire protection operations.
   g. "Public duty" does not include action of the political subdivision or a political subdivision employee under circumstances in which a special relationship can be established between the political subdivision and the injured party. A special relationship is demonstrated if all of the following elements exist:
      (1) Direct contact between the political subdivision and the injured party.
      (2) An assumption by the political subdivision, by means of promises or actions, of an affirmative duty to act on behalf of the party who allegedly was injured.
      (3) Knowledge on the part of the political subdivision that inaction of the political subdivision could lead to harm.
      (4) The injured party's justifiable reliance on the political subdivision's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the political subdivision, or the political subdivision action increases the risk of harm.
4. This chapter does not obligate political subdivisions for an amount that is more than the limitations upon liability imposed by this chapter. Subject to this chapter, any payments to persons constitute payment in full of any compromised claim or judgment or any final judgment under this chapter.
5. Notwithstanding 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.
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.
7. Any party to an action against a political subdivision or a political subdivision employee acting within the scope of employment as defined in this chapter shall comply with

applicable rules of civil procedure when requesting documents or other information in the possession or control of the political subdivision.

32-12.1-04. Political subdivision to be named in action - Personal liability of employees - Indemnification of claims and final judgments.

1. An action for injuries proximately caused by the alleged negligence, wrongful act, or omission of an employee of a political subdivision occurring within the scope of the employee's employment or office shall be brought against the political subdivision. If there is any question concerning whether the alleged negligence, wrongful act, or omission occurred within the scope of employment or office of the employee, the employee may be named as a party to the action and the issue may be tried separately. A political subdivision must defend the employee until the court determines the employee was acting outside the scope of the employee's employment or office.
2. An employee shall not be personally liable for money damages for injuries when the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting within the scope of the employee's employment or office.
3. No employee may be held liable in the employee's personal capacity for acts or omissions of the employee occurring within the scope of the employee's employment unless the acts or omissions constitute reckless or grossly negligent conduct, or willful or wanton misconduct. An employee may be personally liable for money damages for injuries when the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment or office. The plaintiff in such an action bears the burden of proof to show by clear and convincing evidence that the employee was either acting outside the scope of the employee's employment or office or the employee was acting within the scope of employment in a reckless, grossly negligent, willful, or wanton manner. Employees may be liable for punitive or exemplary damages. The extent to which an employee may be personally liable pursuant to this section and whether the employee was acting within the scope of employment or office shall be specifically stated in a final judgment.
4. A political subdivision shall indemnify and save harmless an employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment or office of the employee. The indemnification shall be made in the manner provided by this chapter and shall be subject to the limitations herein.

32-12.1-05. Liability insurance policy coverage.

An insurance policy or insurance contract purchased by a political subdivision or a government self-insurance pool in which a political subdivision 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 governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision pursuant to any other provision of law and if premium savings will result therefrom, any insurance policy purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

32-12.1-06. Statement to commissioner.

Repealed by S.L. 1987, ch. 407, § 2.

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. This chapter does not prohibit a political subdivision from uniting with other political subdivisions in order to purchase liability insurance or to self-insure.

32-12.1-08. Political subdivision risk funding.

1. A political subdivision may provide funding from revenue derived from its general fund tax levy as determined by the governing body to be necessary for risk financing purposes.
2. Any unobligated balance in a political subdivision insurance reserve fund must be transferred to the political subdivision's general fund and the insurance reserve fund must be closed out by December 31, 2015. The general fund of the political subdivision may be used for risk financing purposes and the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision, or costs incurred in the defense of claims.

32-12.1-09. Duties of insurance commissioner.

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

32-12.1-10. Statute of limitations.

1. Except as otherwise provided in this section, an action brought under this chapter must be commenced within three years after the claim for relief has accrued.
2. An action under this chapter for relief that resulted from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20 must be commenced:
   a. Within nine years after the date the act occurred; or
   b. Within twenty-one years after the date the act occurred, if the act occurred when the plaintiff was under eighteen years of age.
3. If the plaintiff was under fifteen years of age when a claim for relief resulting from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20 occurred, the applicable twenty-one year period of limitation does not begin to run until the plaintiff has reached fifteen years of age.

32-12.1-11. Judgment against political subdivision - Levy authority - Additional tax levy for insured subdivisions.

If a final judgment is obtained or a settlement is agreed for a claim against any political subdivision, except a school district, the governing body of the political subdivision may by resolution provide for the levy and collection of an annual tax not exceeding the limitation in section 57-15-28.1 upon the taxable valuation of property within the political subdivision for the payment of such judgment. This section also applies to a judgment obtained or a settlement agreed for a claim against the political subdivision by the state or any agency or instrumentality of the state.

32-12.1-12. Compromise of judgments against political subdivisions - Tax levy to pay reduced judgment - Tax limitations not applicable.

Repealed by S.L. 2015, ch. 439, § 104.

32-12.1-13. Bonds may be issued to pay compromised amount - Regulations governing.

The compromised amount of a judgment agreed upon may be made payable in stated annual installments over a period not exceeding twenty-five years and at an annual rate of interest of not more than five percent. The governing body, by a resolution adopted by an affirmative vote of two-thirds of its members, may issue bonds payable serially and maturing annually, as the parties may agree, and in the amounts of the annual installments and interest determined by the compromise, in satisfaction and discharge of the judgment. Bonds issued under this section shall be delivered to the judgment creditor upon the release of the judgment and in consideration of the full satisfaction thereof. The bonds shall be executed in the name of the political subdivision by the executive officer and the auditor or fiscal officer thereof. Except as otherwise provided in this chapter, the bonds shall be in the form prescribed for political subdivision bonds which are payable from the levy of a general tax. Prior to the delivery of the bonds to the judgment creditor, the bonds shall be certified and recorded by the auditor or fiscal officer in the manner provided by the laws of this state for the certification and recording of general obligation bonds of political subdivisions.

32-12.1-14. Levy of tax to pay principal and interest of bonds - Duty of county auditor.

Repealed by S.L. 2015, ch. 439, § 104.

32-12.1-15. State agencies authorized to purchase insurance and participate in government self-insurance pools - Approval by insurance commissioner.

Repealed by S.L. 1995, ch. 329, § 14.