2023 SENATE INDUSTRY AND BUSINESS

SB 2241

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
1/25/2023

A bill relating to damages for wrongful injuries to timber.

10:33 AM Chairman Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Wrongful injuries to timber trees
- History of ND trees and timber
- Lawsuits
- Liability
- Tree values

10:33 AM Senator Klein introduced SB 2241 and verbally testified in favor.

10:34 AM John Ward, North Dakota Association of Insurance, testified. #16614

10:47 AM Chris Owen, Chairman of Claims for Nodak Mutual Insurance Co. of Fargo, ND, testified in favor of SB 2241. #16593

10:59 AM Chairman D. Larsen closed the hearing on SB 2241.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
1/25/2023

A bill relating to damages for wrongful injuries to timber.

3:14 PM Chairman Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Insurance
- Damage claims
- Tree values
- Number of cases

3:15 PM Senator Kessel provided information verbally.

3:17 PM Senator Klein provided information verbally.

3:22 PM Senator Barta provided information verbally.

3:25 PM Chairman D. Larsen closed the hearing on SB 2241.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
2/1/2023

A bill relating to damages for wrongful injuries to timber.

2:49 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee Action

2:49 PM Chairman D. Larsen summarized SB 2241.

2:55 PM Senator Klein moved DO PASS SB 2241.

2:55 PM Senator Barta Seconded the motion DO PASS SB 2241.

Roll call vote:

Senators	Vote
Senator Doug Larsen	N
Senator Greg Kessel	N
Senator Jeff Barta	Y
Senator Keith Boehm	N
Senator Jerry Klein	Y

Vote: 2-3-0 - Motion Failed DO PASS SB 2241.

2:56 Chairman D. Larsen closed the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
2/8/2023

A bill relating to damages for wrongful injuries to timber.

10:40 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Senator Barta, Senator Klein, Senator Boehm. Members absent: Vice Chairman Kessel.

Discussion Topics:

- Tree bill
- Bill progress
- Possible amendment

Chairman D. Larsen discussed SB 2241.

10:40 AM Chairman D. Larsen closed the meeting on SB 2241

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
2/13/2023

A bill relating to damages for wrongful injuries to timber.

3:20 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

3:20 PM Senator Kessel moved to adopt amendment LC 23.0740.01001 (#20673).
3:20 PM Senator Klein seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passes 5-0-0.

3:22 PM Senator Barta moved to DO PASS AS AMENDED SB 2241.
3:22 PM Senator Boehm seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passes 5-0-0.

Chairman D. Larsen will carry the bill.

3:22 PM Chairman D. Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

23.0740.01001
Title.02000

Adopted by the Senate Industry and Business Committee

February 13, 2023

AG 2-13-23 (1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2241

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 32-03-30 of the North Dakota Century Code, relating to damages for wrongful injuries to timber.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03-30 of the North Dakota Century Code is amended and reenacted as follows:

32-03-30. Damages for ~~wrongful~~intentional injuries to timber.

For ~~wrongful~~intentional injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment~~, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment~~."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2241: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2241 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 32-03-30 of the North Dakota Century Code, relating to damages for wrongful injuries to timber.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03-30 of the North Dakota Century Code is amended and reenacted as follows:

32-03-30. Damages for ~~wrongful~~intentional injuries to timber.

For ~~wrongful~~intentional injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment~~, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment~~."

Renumber accordingly

2023 HOUSE ENERGY AND NATURAL RESOURCES

SB 2241

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2241
3/10/2023

Relating to damages for wrongful injuries to timber

9:14 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

Discussion Topics:

- 1877 language
- Treble damages
- Intentional damages
- Actual damages
- Negligence

Sen Klein, District 14, introduced SB 2241, oral testimony
John Ward, Association, ND Insurers and ANDI (Association of North Dakota Insurers), Testimony 23565
Chris Oen, Vice President of Claims for Nodak Insurance Company and ANDI, Testimony 23459

9:54 AM Chairman Porter closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2241
3/10/2023

Relating to damages for wrongful injuries to timber

10:00 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, and Roers Jones. Absent: Representative Ruby.

Discussion Topics:

- Committee action

Rep Kasper moved to repeal Section 1 and return to the original bill, seconded by Rep Heinert.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	N
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	N
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	AB
Representative Jeremy Olson	N
Representative Shannon Roers Jones	N
Representative Matthew Ruby	AB

8-2-2 Motion carried.

Rep Dockter moved a Do Pass as Amended, seconded by Rep Kasper.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	N
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	N
Representative Jim Kasper	Y
Representative Andrew Marschall	Y

Representative Anna S. Novak	AB
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	AB

10-2-2 Motion carried. Rep Kasper is carrier.
10:09 AM Meeting adjourned.

Kathleen Davis, Committee Clerk

23.0740.02001
Title.03000

Adopted by the House Energy and Natural Resources Committee
March 10, 2023

3/10-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2241

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to repeal section 32-03-30 of the North Dakota Century Code, relating to damages for wrongful injuries to timber.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 32-03-30 of the North Dakota Century Code is repealed."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2241, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2241 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to repeal section 32-03-30 of the North Dakota Century Code, relating to damages for wrongful injuries to timber.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 32-03-30 of the North Dakota Century Code is repealed."

Renumber accordingly

2023 CONFERENCE COMMITTEE

SB 2241

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
4/7/2023
Conference Committee

A bill relating to damages for wrongful injuries to timber.

10:10 AM Chairman Kessel called the Conference Committee meeting to order. Members present: Chairman Kessel, Senator Klein, Senator Boehm, Representative Marschall, Representative Ista. Representative Kasper.

Discussion Topics:

- Bill review
- Amendments
- Neighbors' trees
- Crop spraying
- Intentional definition

10:01 AM Committee discussion on SB 2241

10:17 AM John Ward, Lobbyist, Association of North Dakota Insurers, provided information to the committee.

10:36 AM Continued discussion on SB 2241 and the committee will reschedule another conference committee meeting.

10:36 AM Chairman Kessel adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

Engrossed SB 2241
4/10/2023
Conference Committee

A bill relating to damages for wrongful injuries to timber.

2:30 PM Chairman Kessel called the conference committee meeting to order.
Members present: Chairman Kessel, Senator Klein, Senator Boehm, Representative Marschall, Representative Ista.
Members absent: Representative Kasper.

Discussion Topics:

- Committee discussion on SB 2241

2:36 PM Committee discussion on SB 2241.

2:41 PM Representative Ista moved to Recede from House Amendments.

2:41 PM Representative Marschall seconded the motion.

2:41 PM Roll call vote: 4-1-1 Motion passed.

2:43 PM Chairman Kessel adjourned the meeting.

Brenda Cook, Committee Clerk

NOTE: Conference Committee meeting on April 14, 2023 at 10:00 AM moved to reconsider actions.

Date: 4/10/2023
Roll Call Vote: 1

2023 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2241 engrossed.

Senate Business and Industry Committee

Action Taken
- ☐ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☒ **HOUSE recede from House amendments**
- ☐ **HOUSE recede from House amendments and amend as follows**

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Ista Seconded by: Marshall

Senators	4-10			**Yes**	**No**		**Representatives**	4-10			**Yes**	**No**
Kessel	X			X			Kasper	A				
Klein	X				X		Marschall	X			X	
Boehm	X			X			Ista	X			X	
Total Senate Vote				2	1		Total Rep. Vote				2	0

Vote Count Yes: 4 No: 1 Absent: 1

Senate Carrier Kessel House Carrier Ista

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
4/13/2023
Conference Committee

A bill relating to damages for wrongful injuries to timber.

3:30 PM Chairman Kessel called the conference committee to order.
Members Present: Chairman Kessel, Senator Klein, Senator Boehm, Representative Kasper, Representative Marschall, Representative Ista.
Members absent: None.

Discussion Topics:

- Conference committee discussion

3:31 PM Conference Committee discussion on SB 2241.

3:31 PM John Ward, Association of North Dakota Insurers, provided information to the committee. No written testimony.

3:57 PM Representative Kasper moved to amend SB 2241 by striking out “three times” on page 1 line 8.

3:57 PM Senator Klein seconded the motion.

Roll call vote 3-3-0 Motion failed.

3:59 PM Chairman Kessel adjourned the meeting.

Brenda Cook, Committee Clerk

Date: 4/13/2023
Roll Call #1

2023 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2241 as engrossed

Senate Business and Industry Committee

Action Taken
- ☐ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☒ **HOUSE recede from House amendments and amend as follows**

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: *Kasper* Seconded by: Klein

Senators	4-13			**Yes**	**No**		**Representatives**	4-13			**Yes**	**No**
Kessel	X				X		Kasper	X			X	
Klein	X			X			Marshall	X			X	
Boehm	X				X		Ista	X				X
Total Senate Vote				1	2		Total Rep. Vote				2	1

Vote Count Yes: 3 No: 3 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: Strike out “three times” on page 1 line 8.

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2241
4/14/2023
Conference Committee

A bill relating to damages for wrongful injuries to timber.

10:00 AM Chairman Kessel called the conference committee meeting to order.
Members present: Chairman Kessel, Senator Klein, Senator Boehm, Representative Kasper, Representative Marschall, Representative Ista.
Members absent: None.

Discussion Topics:

- Reconsider SB 2241
- Committee discussion

10:01 AM Senator Klein moved to reconsider committee action on SB 2241 dated April 10, 2023.

10:01 AM Representative Kasper seconded the motion.

10:01 AM Roll call vote 6-0-0- Motion passed.

10:02 AM Representative Kasper moved to amend SB 2241. LC 23.0740.02002

10:02 AM Senator Klein seconded the motion.

10:03 AM Roll call vote: 6-0-0-Motion passed.

10:04 AM Representative Ista moved the House recede from House amendments and further amend SB 2241.

10:04 AM Senator Boehm seconded the motion.

10:04 AM Roll call vote 6-0-0- Motion passed.

Representative Kasper is the House carrier.

Senator Kessel is the Senate carrier.

10:05 AM Chairman Kessel adjourned.

Brenda Cook, Committee Clerk

SK
1001
4/14

23.0740.02002
Title.04000

Adopted by the Conference Committee

April 14, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2241

That the House recede from its amendments as printed on pages 1034 and 1035 of the Senate Journal and pages 1196 and 1197 of the House Journal and that Engrossed Senate Bill No. 2241 be amended as follows:

Page 1, line 8, after "is" insert "up to"

Renumber accordingly

Date: 4/14/2023
Roll Call 1

2023 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2241 engrossed

Senate Business and Industry Committee

Action Taken
- ☐ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☒ **HOUSE recede from House amendments and amend as follows**

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: I*sta* Seconded by: Boehm

Senators	4-14			Yes	No		Representatives	4-14			Yes	No
Kessel	X			X			Kasper	X			X	
Klein	X			X			Marschall	X			X	
Boehm	X			X			Ista	X			X	
Total Senate Vote							Total Rep. Vote					

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Kessel House Carrier Kasper

LC Number 23.0740 . 02002 of amendment

LC Number 23.0740 . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 23.0740.02002
Senate Carrier: Kessel
House Carrier: Kasper

REPORT OF CONFERENCE COMMITTEE

SB 2241, as engrossed: Your conference committee (Sens. Kessel, Klein, Boehm and Reps. Kasper, Marschall, Ista) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1034-1035, adopt amendments as follows, and place SB 2241 on the Seventh order:

That the House recede from its amendments as printed on pages 1034 and 1035 of the Senate Journal and pages 1196 and 1197 of the House Journal and that Engrossed Senate Bill No. 2241 be amended as follows:

Page 1, line 8, after "is" insert "up to"

Renumber accordingly

Engrossed SB 2241 was placed on the Seventh order of business on the calendar.

TESTIMONY

SB 2241

SB 2241 Wrongful Damage to Timber

Chris Oen
Association of North Dakota Insurers
Nodak Insurance Company

Chairman Larsen, members of the Senate Business and Labor committee, good morning. My name is Chris Oen, VP of Claims with Nodak Insurance Company. I present to you today on behalf of Nodak Insurance Company and the Association of ND Insurers testifying in favor of SB 2241 and ask for a "Do Pass" vote by this committee. ANDI represents those insurance companies that are domesticated and operate in North Dakota. Those primary members being Heartland Mutual of Minot, ND; Center Mutual Insurance of Rugby, ND; Farmers Union Insurance of Jamestown; and Nodak Insurance Company of Fargo.

North Dakota Century Code 32-03-30 defines "Damages for wrongful injuries to timber". As I was preparing for my testimony, I ended up going down a huge black hole in attempting to find the basis of why this was in our ND statutes. The best that I could find was it originated in 1913 (110 years ago) finding the first rendition of this law in the Compiled Laws of the State of ND 1913.

The further I looked (which gave a lot of uncertainty for sure) was this law was based on the founding of our state, with inter and intra state transportation exploded. Think back to 1913 with railroads and roadways being built. Landowners were subject to railways coming through their property in explosive fashions.

In the early 1900's trees in North Dakota were likely at a premium. Landowners did not want them haphazardly removed and I believe this law was designed and implemented to give those landowners rights and recovery for removal of timber. And when that timber was removed, the law set a premium – note the "measure of damages is three times such a sum would compensate for the actual detriment". Keep that in mind.

Fast forward to today. While timber and trees are still important to property owners, why should ND have a law that unduly punishes an entity that inadvertently causes property damage to trees? Within insurance liability claims, we see most commonly the following claims that arise out of farming practices, fire and chemical drift.

Farmers in ND have been faced with lawsuits in such manners. Nodak currently has litigation pending where our insured was haying. As he turned around at the end of the field, he noticed a fire had started. This fire was likely due to a rock being struck by the equipment and sparked. By the time the fire was contained, it burned into a tree row owned by an adjacent landowner.

With this law, a demand for payment for the damage to the timber was the value of the timber times 3. The loss to the timber demand is actually well over 5X the actual real property value of the land itself.

The next part of 32-03-30 does talk about trespass being "casual and involuntary" and that would seem to put the damages at the actual detriment. But again, what does "casual and involuntary" mean? Take the scenario of a spray drift. If a wind changes direction or suddenly increases in speed, does that not make it casual? You can start to see the issue with this law.

Nearly every claim or event that we see from the insurance side is usually farmer against farmer, landowner against landowner. The undue nature and harshness of this law should not go unrecognized. Why would it be in the best interest of a state that prides itself on agriculture to penalize for one singular type of property damage – trees & timber? We don't have any other similar law that penalizes someone for causing property damage. We don't have laws that triple the cost of remedy if a person were to hit a building with a car? ND has no similar law regarding specific property damage.

Removal of this statute would set the remedy of what it should be, what is the value of the trees or timber lost. It won't solve how that is calculated, there will still be differing of opinions on what the value of a tree is. But it takes out the confusion of what is the level of responsibility against the wrongdoer, along with removing an antiquated and punitive penalty of tripling the damages calculated.

Also, I can tell you with my experience working in claims for over 25 years, there is another issue of the punitive nature of this law. There is case law across the country that treble damage (as in this statute) are not covered by insurance coverage. Treble damages at its source are meant to punish the wrongdoer. North Dakota has its own statute that states punitive damages are not to be covered by insurance.

The reality if this law were to continue to exist is that a farmer or person as mentioned above could face uncovered damages.

There will be subsequent testimony about this proposed bill. Let's be clear, no one is attempting to remove the ability for a person or entity that suffers damage to trees or timber to be restricted or waived from making a claim. There are statutes in ND that allow for those claims to happen. My testimony is strictly to remove the punishing nature of this antiquated law to be removed and allow proper claims for damage to be heard by the court. I anticipate that you will hear further testimony that will support the ability for those affected by tree claims to still be clearly and definitively allowed under other statute to bring those claims.

January 25, 2023

John Ward, Association of North Dakota Insurers

Testimony in support of SB 2241

Good Morning Chairman Larsen and Members of the Committee:

My Name is John Ward. I am here representing the Association of North Dakota Insurers or ANDI. ANDI is an association of North Dakota domestic insurance companies.

I am here today in support of SB2241 which seeks to repeal NDCC § 32-03-30, which relates to Damages for Wrongful Injuries to Timber. NDCC § 32-03-30 provides as follows:

> For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment.
>
> (the "Timber Statute")

The Timber Statute has been on the books in some form since 1877. The Timber Statute no longer is necessary as our Century Code has been updated since the days of North Dakota's territorial laws. A person who suffers injury to timber, trees, or underwood (which are essentially trees and bushes) can sue the person causing the damage under a variety of tort theories or other statutes that are already in the Century Code.

A person can sue for damages to their trees and bushes under NDCC §§ 32-03-09, 32-03-09.1, 32-03-9.2, and 32-03-20. These statutes respectively provide that a person whose trees or shrubs are damaged or destroyed can sue for the damages that they suffered to their property. Those statutes are cited below:

> **32-03-09. Measure of damages for breach of contract - Damages must be certain.**
>
> For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by the laws of this state, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby or which in the ordinary course of things would be likely to result therefrom. No damages can be recovered for a breach of contract if they are not clearly ascertainable in both their nature and origin.
>
> **32-03-09.1. Measure of damages for injury to property not arising from contract.**
>
> The measure of damages for injury to property caused by the breach of an obligation not arising from contract, except when otherwise expressly provided by law, is presumed to be the reasonable cost of repairs necessary to restore the property to the

condition it was in immediately before the injury was inflicted and the reasonable value of the loss of use pending restoration of the property, unless restoration of the property within a reasonable period of time is impossible or impracticable, in which case the measure of damages is presumed to be the difference between the market value of the property immediately before and immediately after the injury and the reasonable value of the loss of use pending replacement of the property. Restoration of the property shall be deemed impracticable when the reasonable cost of necessary repairs and the reasonable value of the loss of use pending restoration is greater than the amount by which the market value of the property has been diminished because of the injury and the reasonable value of the loss of use pending replacement.

32-03-09.2. Liability for willful damages to property.

Any person convicted of criminal mischief shall be responsible for the actual damages to real and personal property and such damages may be recovered in a civil action in a court of competent jurisdiction. Additionally, any minor against whose parents a judgment may be entered pursuant to section 32-03-39 for damages resulting from action of the minor shall be jointly and severally liable with the parents of the minor for such action up to the maximum amount provided in section 32-03-39 and solely liable for any damages over that amount. Any judgment rendered pursuant to this section shall not be discharged in bankruptcy and shall not be subject to the statutes of limitations provided in chapter 28-01, nor shall such judgment be canceled pursuant to section 28-20-35.

32-03-20. Measure of damages for tort.

For the breach of an obligation not arising from contract, the measure of damages, except when otherwise expressly provided by law, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

SB 2241 eliminates this unnecessary statute from the Century Code. The Timber Statute came to the attention of ANDI, as Plaintiff's Lawyers have sought to take advantage of the somewhat archaic language in the statute in an attempt to obtain large verdicts. This is because the Timber Statute provides that all actual damages suffered by the injured person are trebled, if the damages are "casual and involuntary". In a recent case that went up to the North Dakota Supreme Court, the jury found actual damages of $40,500.00 and costs of $4,597.79 but because of the treble damages provision under the statute the award was tripled to $126,097.79. Haider v. Moen, 2018 ND 174. The archaic language that is at issue is the term "casual", which has a different meaning now as opposed to the year 1877. It seems that there has been significant juror confusion over the term "casual".

The consequences of the treble damages provision under the Timber Statute is that a party causing damages could be uninsured or underinsured depending on the outcome of the verdict. This would cause substantial loss to fall on that party personally.

Finally, this statute places a reverse presumption on the party causing the damage. This is different than other civil lawsuits, where the Plaintiff bears the burden of proving to the jury that the party causing the damage did so (not casually or involuntarily). In this circumstance, the burden is shifted to the party

causing the damage to prove that it was casual and involuntary. In other words, the person seeking damages under the Timber Statute automatically starts with three times the amount of their actual damages, subject to the ability of the party causing the damage to prove otherwise.

In conclusion, the repeal of this statute will not affect a person's ability to bring a lawsuit to recover for his or her actual tree damage, it will simply remove an outdated statute from our code that in current practice is being abused.

ANDI urges a DO PASS on SB 2241.

Thank you for your time and attention,

John Ward

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2241

Page 1, line 1, after "A Bill" replace the remainder of the bill with "for an act to amend and reenact Section 32-03-30 of the North Dakota Century Code, relating to damages for wrongful injuries to timber.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03-30 of the North Dakota Century Code is amended and reenacted as follows:

32-03-30. Damages for ~~wrongful~~intentional injuries to timber.

For ~~wrongful~~intentional injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment~~, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment~~.

North Dakota House Energy & Natural Resources Committee
Chairman Todd Porter

Senate Bill 2241 – amendment to NDCC 32-03-30

Association of North Dakota Insurers – testifying in SUPPORT of this bill.

Chairman Porter and members of the North Dakota House Energy & Natural Resources Committee –

My name is Chris Oen. I serve as the Vice President of Claims for Nodak Insurance Company along with as a board member of the Association of North Dakota Insurers, or ANDI for short. ANDI comprised of insurance companies that are domesticated in North Dakota, along with associate members that do insurance business within this state. The core domestic members are Center Mutual Insurance, Farmers Union Insurance, Heartland Mutual Insurance, and Nodak Insurance Company.

I come here today to encourage a DO PASS vote from this committee on the first engrossment of SB 2241.

North Dakota Century Code 32-03-30 defines "Damages for wrongful injuries to timber". As I was preparing for my testimony, I ended up going down a huge black hole in attempting to find the basis of why this was in our ND statutes. The best that I could find was it originated in 1913 (110 years ago) finding the first rendition of this law in the Compiled Laws of the State of ND 1913.

The further I looked (which gave a lot of uncertainty for sure) was this law was based on the founding of our state, with inter and intra state transportation exploded. Think back to 1913 with railroads and roadways being built. Landowners were subject to loss of trees in many ways and often against their wants.

In the early 1900's trees in North Dakota were likely at a premium. Landowners did not want them haphazardly removed and I believe this law was designed and implemented to give those landowners rights and recovery for removal of timber. And when that timber was removed, the law set a premium – note the "measure of damages is three times such a sum would compensate for the actual detriment".

Fast forward to today. While timber and trees are still important to property owners, why should ND have a law that unduly punishes an entity that inadvertently causes property damage to trees?

The original draft of this bill was to strike out the entire law. However, after discussions within the House along with input from parties that deal with damages to timber, and more clear amendment was agreed to and the Senate passed the bill unanimously.

If you look at this bill in its current form, it is important to look at what is being struck. The 2nd word is Wrongful. ANDI is here today testifying in support because most damage to timber in ND is of the accidental or inadvertent type. For example, a person is burning some leaves and the fire gets away and causes fire damage to a group of trees. Or maybe a farmer is spraying crops and the wind shifts causing drift.

I want to make it clear to the committee that this change does not bar a person for making a claim for damages to trees or timber. The legal right to make these claims are exactly similar to any other

property damage. What typically occurs on accidental or inadvertent damages to trees, an arborist or "expert" will come in and value the tree damage and the claim is paid if owed. Values on trees are commonly assessed every day within our state.

The intent of this change is to clear up when treble/tripled damages can be recovered. In the last part of the "exception" language that is struck, the law was intended to exclude "casual and involuntary trespass". What is being proposed by striking the language and applying treble damages to only intentional trespass or damage. The newly drafted language is clearer and more defined.

On behalf of the Association of ND Insurers, we encourage this committee to give a "Do Pass" recommendation.

March 10, 2023

John Ward, Association of North Dakota Insurers

Testimony in support of SB 2241

Good Morning Chairman Porter and Members of the Committee:

My name is John Ward and I am local Bismarck attorney and lobbyist representing the Association of North Dakota Insurers or ANDI. ANDI is composed of North Dakota domestic insurance companies and other members. ANDI's members include Nodak Insurance, Center Mutual, Farmers Union, Heartland, and EMC, among others.

I am here today in support of SB2241 which seeks to amend NDCC § 32-03-30, which relates to Damages for Wrongful Injuries to Timber. NDCC § 32-03-30 provides as follows:

> For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment.
>
> (the "Timber Statute")

The Timber Statute has been on the books in some form since 1877. The Language of the Timber Statute is somewhat antiquated and the purpose of this revision is to clarify that the act applies to intentional acts, where a person intentionally injures another person's trees or shrubs, specifically with the intent to actually harm or damage the trees of another. There has been some confusion in the Courts with the 1877 language that is still on the books.

The amended bill before this committee seeks to clarify that a person, who cuts down his or her neighbor's tree, may be responsible for three times the value of the tree. It is imperative that the person causing the tree damage is acting with the intent to do the harm.

The amended language is as follows:

> For ~~wrongful~~intentional injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment~~, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment~~.

I also work as an attorney for the firm Evenson Sanderson, PC in Bismarck. My firm has litigated many of these tree damage cases. Plaintiff's lawyers often try to blur the lines between intentional and merely negligent acts. The 1877 language of the Timber Statute relies on the term "casual and involuntary" to take a person out of the required intent to be liable for treble damages or triple damages under the former 1877 statute that remains on the books today. The Amended Bill before you removes the confusing standard of "casual and involuntary" and clarifies that this statute only applies where there is intent to cause damage to someone's trees.

A person who unintentionally or negligently causes damages to trees may still be held liable for those damages under a variety of other statutes that are already in the Century Code. A person can sue for unintentional damage to their trees and bushes under NDCC §§ 32-03-09, 32-03-09.1, 32-03-9.2, and 32-03-20. The important distinction being made in SB 2241 is that there is no claim for unintentional damages that can be brought under NDCC § 32-03-30.

Those statutes that provide for unintentional damages are cited below:

32-03-09. Measure of damages for breach of contract - Damages must be certain.

For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by the laws of this state, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby or which in the ordinary course of things would be likely to result therefrom. No damages can be recovered for a breach of contract if they are not clearly ascertainable in both their nature and origin.

32-03-09.1. Measure of damages for injury to property not arising from contract.

The measure of damages for injury to property caused by the breach of an obligation not arising from contract, except when otherwise expressly provided by law, is presumed to be the reasonable cost of repairs necessary to restore the property to the condition it was in immediately before the injury was inflicted and the reasonable value of the loss of use pending restoration of the property, unless restoration of the property within a reasonable period of time is impossible or impracticable, in which case the measure of damages is presumed to be the difference between the market value of the property immediately before and immediately after the injury and the reasonable value of the loss of use pending replacement of the property. Restoration of the property shall be deemed impracticable when the reasonable cost of necessary repairs and the reasonable value of the loss of use pending restoration is greater than the amount by which the market value of the property has been diminished because of the injury and the reasonable value of the loss of use pending replacement.

32-03-09.2. Liability for willful damages to property.

Any person convicted of criminal mischief shall be responsible for the actual damages to real and personal property and such damages may be recovered in a civil action in a court of competent jurisdiction. Additionally, any minor against whose parents a judgment may be entered pursuant to section 32-03-39 for damages resulting from action of the minor shall be jointly and severally liable with the parents of the minor for such action up to the

maximum amount provided in section 32-03-39 and solely liable for any damages over that amount. Any judgment rendered pursuant to this section shall not be discharged in bankruptcy and shall not be subject to the statutes of limitations provided in chapter 28-01, nor shall such judgment be canceled pursuant to section 28-20-35.

32-03-20. Measure of damages for tort.

For the breach of an obligation not arising from contract, the measure of damages, except when otherwise expressly provided by law, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

SB 2241 eliminates unnecessary and confusing language from the Timber Statute. This bill has come to the attention of ANDI after having litigated many of these cases in recent years, where Plaintiff's attorneys sought outrageous damages for relatively common, unintentional occurrences, such as a fire caused by a combine fire during harvest. Thousands of combine fires occur every year in the US.

The consequences of the ambiguity in the existing 1877 language is that treble damages are presumed to apply unless the Defendant can show that the action causing the fire was "casual and involuntary". Well, what does that mean?

After having seen so many farmers or landowners face shocking tree claims from aggressive Plaintiff's attorneys, it was decided that ANDI would try and fix this issue. There is nothing worse than having to tell a client/insured that their neighbor is claiming that the old Siberian Elm and Russian Olive tree row is worth $1,000,000. And worse yet, that the same neighbor is seeking treble damages, in other words, $3,000,000. If the Landowner has $2,000,000 dollars of coverage, they are exposed and potentially personally liable for $1,000,000. That leaves the farmer exposed. Now, he might literally "lose the farm" unless he can show his actions were "casual and involuntary"...whatever that means.

The proposed revisions to NDCC § 32-03-30 are to clarify that the statute only applies to intentional injuries to trees, shrubs, or underwood.

ANDI urges a DO PASS on SB 2241.

Thank you

Sincerely,

John Ward