

# JUDICIAL REMEDIES

## CHAPTER 233

### HOUSE BILL NO. 1314

(Representative Guggisberg)

AN ACT to amend and reenact section 32-03.1-02.3 of the North Dakota Century Code, relating to limited liability for use of automated external defibrillators.

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

**SECTION 1. AMENDMENT.** Section 32-03.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**32-03.1-02.3. Automated external defibrillators - Requirements**~~Liability limited.~~

- ~~1. Except for a medical services facility or prehospital emergency medical services provider, every person who acquires an automated external defibrillator shall:~~
  - ~~a. Require every individual expected to use the automated external defibrillator to receive training in the most recent nationally recognized course in cardiopulmonary resuscitation and automated external defibrillator use;~~
  - ~~b. Maintain and test the automated external defibrillator according to the manufacturer's operational guidelines;~~
  - ~~c. Establish an automated external defibrillator use protocol that provides any person who provides emergency care or treatment to an individual in cardiac arrest by using the automated external defibrillator shall contact, as soon as possible, an appropriate health care provider or emergency medical services provider; and~~
  - ~~d. Consider recommendations of a licensed physician in establishing the training, notification, and maintenance requirements of this subsection.~~

~~2. Any person~~An individual who in good faith and without compensation provides training to use an automated external defibrillator, emergency care by using an automated external defibrillator, or emergency treatment by using an automated external defibrillator is immune from civil liability for any personal injury resulting from the training, emergency care, or emergency treatment and for any act or failure to act in providing or arranging further medical treatment if the personindividual providing the training, emergency care, or emergency treatment acted as an ordinary, reasonable, prudent person would act under the same or similar circumstances. This subsection~~section~~ does not apply if a personal injury results from the gross negligence or from the willful or wanton misconduct of the personindividual providing the training, emergency care, or emergency treatment.

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3. ~~The immunity provision of subsection 2 applies to a licensed physician under subdivision d of subsection 1, the person who provides the training under subdivision a of subsection 1, and This section provides immunity to the person responsible for the site on which the automated external defibrillator is located.~~
  4. This section does not limit civil liability protection provided by any other law.

Approved March 21, 2017

Filed March 22, 2017

## CHAPTER 234

### HOUSE BILL NO. 1088

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to create and enact a new section to chapter 32-12.2 of the North Dakota Century Code, relating to data breach response and remediation costs.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

#### **Data breach response and remediation costs.**

The director of the office of management and budget may pay from the risk management fund costs necessary for notification and remediation following a data breach involving a state entity. The director of the office of management and budget, in consultation with the information technology department and the state entity involved, shall determine what measures are to be taken under this section. Expenditures under this section are limited to two hundred fifty thousand dollars per incident and may be made only to the extent the risk management fund can continue to meet current and future liability obligations and the response and remediation costs are not covered through insurance. The director may purchase insurance and approve the purchase of insurance by state entities to cover data breach response and remediation costs. Each state entity shall contribute the appropriate share of its costs under this section as determined by the director.

Approved March 2, 2017

Filed March 3, 2017

## CHAPTER 235

### HOUSE BILL NO. 1336

(Representatives Keiser, D. Anderson, Lefor)  
(Senators Klein, Unruh)

AN ACT to provide for limitations of penalties for environmental audits.

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

#### **SECTION 1.**

##### **Environmental audits - Violations.**

1. As used in this section:

- a. "Environmental audit" means a voluntary, internal, and comprehensive evaluation of a facility or activity which is intended to prevent noncompliance with environmental laws, rules, or permits enforced by a regulatory agency under chapter 23-25, 23-20.3, 23-29, 38-08, or 61-28. An environmental audit may be conducted by an owner, operator, or prospective owner or operator. An employee or independent contractor may conduct an environmental audit on behalf of the owner, operator, or prospective owner or operator.
  - b. "Environmental audit report" means a set of documents labeled "Environmental Audit Report: Privileged Document" prepared as a result of an environmental audit which must include a description of the scope of the audit; the information gained in the audit and findings, conclusions, and recommendations; and exhibits and appendices. The exhibits and appendices to the environmental audit report may include interviews with current or former employees, field notes and records of observations, findings, opinions, suggestions, conclusions, guidance, notes, drafts, memoranda, legal analyses, drawings, photographs, laboratory analyses and other analytical data, computer-generated or electronically recorded information, maps, charts, graphs, and surveys and other communications associated with an environmental audit.
  - c. "Regulatory agency" means the agency with regulatory authority over the facility or activity.
  - d. "Willfully" has the same meaning as provided under section 12.1-02-02.
2. A regulatory agency may not pursue civil penalties for a violation found during an environmental audit which the regulated entity discloses to the regulatory agency in writing within forty-five days after the violation is found, unless:
- a. The violation caused imminent or substantial harm to human health or the environment;
  - b. The violation is found by the regulatory agency before the regulated entity discloses the violation in writing to the regulatory agency;

- c. The regulated entity does not correct the violation within sixty days of discovery or, if correction within sixty days is not possible, within a reasonable period as agreed upon in writing by the regulatory agency, but not to exceed three hundred sixty-five days;
  - d. The regulated entity established a pattern of repeated violations of environmental law, rule, permit, or order by committing the same or similar violation that resulted in the imposition of a penalty by a regulatory agency more than once within two years before the date of the disclosure;
  - e. The regulated entity willfully violated a state or federal environmental law, rule, or permit;
  - f. The violation is a result of gross negligence, as defined under section 1-01-17; or
  - g. The regulatory agency assumed primacy over a federally delegated environmental program and a waiver of penalty authority for the violation would result in a state program less stringent than the federal program or the waiver would violate any federal rule required to maintain primacy. If a federally delegated program requires the imposition of a penalty for a violation, to the extent allowed under federal law or rule, the voluntary disclosure must be considered a mitigating factor in determining the penalty amount.
3. To qualify for a penalty exemption under subsection 2, the regulated entity shall notify the regulatory agency in writing before beginning the environmental audit. The notice must specify the facility or portion of the facility to be audited, the audit's anticipated start date, and the general scope of the audit. Unless the regulatory agency agrees in writing to an extension, the environmental audit must be completed within one hundred eighty days of the start date. This section may not be construed to authorize uninterrupted or continuous environmental audits.
  4. Reporting a violation is mandatory if the reporting is required under chapter 23-25, 23-20.3, 23-29, 38-08, or 61-28, any rule or permit implementing those chapters, any federal law or rule, or any administrative or court order.
  5. Notwithstanding subsection 2, the regulatory agency may pursue civil penalties against a regulated entity for a violation disclosed under this section if the regulatory agency finds the regulated entity:
    - a. Intentionally misrepresented material facts concerning the violation disclosed or the nature or extent of any damage to human health or the environment; or
    - b. Initiated a self-audit to avoid liability for a violation after the regulated entity's knowledge or imminent discovery.
  6. Unless the privilege is expressly waived by the regulated entity that prepared the report, an environmental audit report is privileged and not admissible evidence in a civil action or proceeding. The regulated entity asserting this privilege has the burden of proving the privilege. The privilege does not apply to:

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- a. Information relating to the types of violations listed in subsection 2.
  - b. Information relating to a violation subject to a regulatory agency's finding under subsection 5.
  - c. Disclosures, notifications, and other information provided by the regulated entity to the regulatory agency under this section.
7. Failure to label a document in an exhibit or appendix to an environmental audit report does not constitute a waiver of the audit privilege under this section or create a presumption the privilege does not apply.

Approved March 29, 2017

Filed March 30, 2017

## CHAPTER 236

### HOUSE BILL NO. 1197

(Representatives K. Koppelman, Jones, Kasper, Keiser, D. Ruby)  
(Senators Campbell, Klein, Krebsbach)

AN ACT to create and enact a new chapter to title 32 of the North Dakota Century Code, relating to asbestos bankruptcy trust transparency.

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

**SECTION 1.** A new chapter to title 32 of the North Dakota Century Code is created and enacted as follows:

##### **Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in title 29, Code of Federal Regulations, part 1910.
2. "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of the exposed individual. This term does not include a claim for compensatory benefits pursuant to workers' compensation or veterans' benefits.
3. "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. 524(g), 11 U.S.C. 1121(a), or other applicable provision of law intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.
4. "Plaintiff" means an individual asserting an asbestos action, a decedent if the action is brought on behalf of an estate, and a parent or guardian if the action is brought on behalf of a minor or legally incapacitated individual.
5. "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions, trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the trust claim has settled, all documents relating to the settlement of the trust claim.

6. "Trust governance documents" means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization for an asbestos trust.
7. "Veterans' benefits" means a program administered by the veterans' administration under 38 U.S.C.
8. "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases, injuries, disability, or death caused by an individual's occupation. The term does not include 45 U.S.C. 51.

**Required disclosures by plaintiff.**

1. Within thirty days after an asbestos action is filed, the plaintiff shall:
  - a. Provide the court and parties with a sworn statement signed by the plaintiff and plaintiff's counsel indicating an investigation of all asbestos trust claims has been conducted and all asbestos trust claims that could be made by the plaintiff have been filed. The sworn statement must indicate whether a request has been made to defer, delay, suspend, or toll any asbestos trust claim and provide the disposition of each asbestos trust claim.
  - b. Provide parties with all trust claims materials, including materials related to the conditions other than those that are the basis for the asbestos action and any materials from all law firms connected to the plaintiff in relation to the plaintiff's exposure to asbestos.
  - c. Produce all available trust claims materials submitted to any asbestos trusts by other individuals if the plaintiff's asbestos trust claim is based on exposure to asbestos through those individuals.
2. The plaintiff shall supplement the information and materials required under this section within thirty days after supplementing an existing asbestos trust claim, receiving additional information or materials related to an asbestos trust claim, or filing an additional asbestos trust claim.
3. The court may dismiss an asbestos action if the plaintiff fails to comply with this section.
4. An asbestos action may not proceed to trial until at least one hundred eighty days after the requirements of this section have been met.

**Identification of additional or alternative asbestos trust by defendant.**

1. A defendant may file a motion requesting a stay of the proceedings by the later of the seventy-fifth day before the trial is set to commence or the fifteenth day after the defendant first obtains information supporting additional trust claims by the plaintiff. The defendant shall produce or describe the documentation the defendant possesses or of which the defendant is aware in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim.
2. Within ten days of receiving the defendant's motion, the plaintiff shall:

- a. File the asbestos trust claims;
  - b. File a written response with the court stating why insufficient evidence exists for the plaintiff to file the asbestos trust claims; or
  - c. File a written response with the court requesting a determination that the cost to file the asbestos trust claims exceed the plaintiff's reasonably anticipated recovery.
3. If the court determines there is a sufficient basis for the plaintiff to file an asbestos trust claim, the court shall stay the asbestos action until the plaintiff files the asbestos trust claim and produces all related trust claims materials.
  4. If the court determines the cost of submitting an asbestos trust claim exceeds the plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified asbestos trust.
  5. The court may not schedule the asbestos action for trial until at least sixty days after the plaintiff files the documentation required under this section.

#### **Discovery - Use of materials.**

1. Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. A claim of privilege does not apply to any trust claims materials or trust governance documents.
2. A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege to bar discovery and shall provide consent or other expression of permission as required by the asbestos trust to release information and materials sought by the defendant.
3. Trust claims materials sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the trust was established to provide compensation and that such exposure may be a substantial contributing factor in causing the plaintiff's injury.

#### **Trust record.**

At least thirty days before trial, the plaintiff shall provide the court with documentation identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the documentation into the record.

#### **Failure to provide information - Sanctions.**

1. The court may impose any sanction provided by court rule or law upon the motion of a defendant or judgment debtor seeking sanctions or other relief for failure to comply with the requirements of this chapter.
2. If the plaintiff files an asbestos trust claim after the plaintiff obtains a judgment and the asbestos trust was in existence at the time of the judgment, the trial court upon motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to adjust the judgment by the amount of any

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subsequent asbestos trust payments obtained by the plaintiff and to order additional relief to the parties.

3. A defendant or judgment debtor may file a motion under this section within one year after the court enters a final judgment.

Approved April 14, 2017

Filed April 17, 2017