

# JUDICIAL REMEDIES

## CHAPTER 312

### HOUSE BILL NO. 1243

(Representatives Hoverson, Louser, Monson, Motschenbacher, Schneider, Weisz)  
(Senator Burckhard)

AN ACT to amend and reenact sections 32-03.1-01, 32-03.1-02, and 32-03.1-02.2 of the North Dakota Century Code, relating to the Good Samaritan Act, actions barred, and immunity for persons offering wholesome food or grocery product.

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

**SECTION 1. AMENDMENT.** Section 32-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **32-03.1-01. Definitions.**

For the purposes of this chapter, the following terms shall have the designated meanings:

1. "Aid or assistance necessary or helpful in the circumstances" means any actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap, or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed the aider could successfully undertake.
2. "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.
3. "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.
4. "Appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance" means any physician, nurse, emergency medical technician, or other medical or paramedical personnel whom the aider reasonably believes is such, based upon the representations of the person or that person's actions in providing medical aid.
- 3-5. "Employed expressly or actually" means either that the person's formal duties include the provision of emergency medical aid, or that the person customarily provides such aid and is informally expected or relied upon to do so in the course of the person's employment.

4-6. "Gross negligence" means acts or omissions falling short of intentional misconduct which nevertheless show a failure to exercise even slight care or any conscious interest in the predictable consequences of the acts or omissions. For the purposes of this chapter, "gross negligence" includes the failure of an aider to relinquish direction of the care of an injured or ill person when an appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance assumes or attempts to assume responsibility for the care of the injured or ill person.

**SECTION 2. AMENDMENT.** Section 32-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**32-03.1-02. Actions barred.**

~~No person~~An individual, or the ~~person's~~individual's employer, subject to the exceptions in sections 32-03.1-03, 32-03.1-04, and 32-03.1-08, who renders aid or assistance necessary or helpful in the circumstances to ~~other persons~~another individual who ~~have~~has been injured or ~~are~~is ill as the result of an accident or illness, or any mechanical, external or organic trauma, or in the offering of apparently wholesome food or an apparently fit grocery product may not be named as a defendant or held liable in any personal injury civil action by any party in this state for acts or omissions arising out of a situation in which emergency aid or assistance is rendered, unless it is plainly alleged in the complaint and later proven that ~~such person's~~the individual's acts or omissions constituted intentional misconduct or gross negligence.

**SECTION 3. AMENDMENT.** Section 32-03.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**32-03.1-02.2. Immunity for a licensed health care provider who provides volunteer medical care at free clinics - Immunity for persons offering wholesome food or grocery product.**

1. A health care provider licensed under title 43 who renders medical care on a voluntary basis at a free clinic is not liable in any personal injury civil action for acts or omissions resulting in the rendering of that care unless it is plainly alleged in the complaint and later proven that the health care provider's acts or omissions constituted intentional misconduct or gross negligence. For purposes of this section, "voluntary" is defined as without receiving remuneration of any sort. "Free clinic" is defined as a clinic that is established to provide primary health care to persons who are otherwise unable to obtain medical services due to their lack of access to health insurance or medical assistance.
2. A restaurant, grocery store, or an individual or entity offering apparently wholesome food and apparently fit grocery products, free of charge may not be held liable for any acts or omissions resulting in the offering of food care, unless it is plainly alleged in the complaint and later proven the act of the individual or entity constituted intentional misconduct or gross negligence.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 313

### HOUSE BILL NO. 1284

(Representatives Pyle, Hagert, O'Brien, D. Ruby, Wagner)  
(Senators J. Roers, Vedaa)

AN ACT to amend and reenact section 32-03.3-02 of the North Dakota Century Code, relating to liability limitations of charitable organizations; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 32-03.3-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-03.3-02. Liability of charitable organizations - Limitations - Statute of limitations.**

1. A charitable organization may be only held liable for money damages for a personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.
2. The liability of the charitable organization under this chapter is limited to a total of ~~two~~three hundred ~~fifty~~seventy-five thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The charitable organization may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages. The liability limits under this subsection must be adjusted annually as follows:
  - a. On July 1, 2025, a total of four hundred six thousand two hundred fifty dollars per person and one million six hundred twenty-five thousand dollars for any single occurrence.
  - b. On July 1, 2026, a total of four hundred thirty-seven thousand five hundred dollars per person and one million seven hundred fifty thousand dollars for any single occurrence.
  - c. On July 1, 2027, a total of four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars per occurrence.
3. An action brought under this chapter must be commenced within the period provided in chapter 28-01.

**SECTION 2. AMENDMENT.** Section 32-03.3-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-03.3-02. Liability of charitable organizations - Limitations - Statute of limitations.**

1. A charitable organization may be only held liable for money damages for a personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.
2. The liability of the charitable organization under this chapter is limited to a total of ~~three~~five hundred ~~seventy-five~~ thousand dollars per person and ~~one~~two million dollars for any number of claims arising from any single occurrence. The charitable organization may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages. ~~The liability limits under this subsection must be adjusted annually as follows:~~
  - a. ~~On July 1, 2025, a total of four hundred six thousand two hundred and fifty dollars per person and one million six hundred twenty-five thousand dollars for any single occurrence.~~
  - b. ~~On July 1, 2026, a total of four hundred thirty-seven thousand five hundred dollars per person and one million seven hundred fifty thousand dollars for any single occurrence.~~
  - c. ~~On July 1, 2027, a total of four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars per occurrence.~~
3. An action brought under this chapter must be commenced within the period provided in chapter 28-01.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1, 2023.

**SECTION 4. EFFECTIVE DATE.** Section 2 of this Act becomes effective on July 1, 2029.

**SECTION 5. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 314

### SENATE BILL NO. 2072

(State and Local Government Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 32-09.1-05 of the North Dakota Century Code, relating to service of garnishment.

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

**SECTION 1. AMENDMENT.** Section 32-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-09.1-05. Service on office of management and budget - Fees.**

Service upon the state of North Dakota, or any state institution, department, or agency, as garnishee, may be made upon the director of the office of management and budget, or the director's authorized designee, in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the office of management and budget for making and filing an affidavit of disclosure in the amount of twenty-five dollars. The fee must be deposited in the state treasury. The director of the office of management and budget may provide for an optional electronic method of service for which disclosure fees are not required.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 315

### SENATE BILL NO. 2109

(State and Local Government Committee)  
(At the request of the Office of Management and Budget)

AN ACT to create and enact subsection 5 of section 32-12.2-15 of the North Dakota Century Code, relating to limitation of liability provisions contained within packaging or click-through agreements for certain products.

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

**SECTION 1.** Subsection 5 of section 32-12.2-15 of the North Dakota Century Code is created and enacted as follows:

5. An agency may purchase routine or standardized products that contain adhesive contract terms in shrink wrap documents, third-party end user license, or click-through agreements that are not consistent with this section if the agency, in consultation with the attorney general's office and the office of management and budget, determines the purchase poses no reasonable risk of loss that cannot be limited under this section given the nature of the product's intended use, including data and system security. Routine or standardized products are products that are commercially available to the public which do not exceed one thousand dollars in cost.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 316

### SENATE BILL NO. 2041

(Judiciary Committee)

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

AN ACT to create and enact chapter 32-49 of the North Dakota Century Code, relating to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act; and to repeal section 32-03-58 of the North Dakota Century Code, relating to the distribution of intimate images without or against consent.

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

**SECTION 1.** Chapter 32-49 of the North Dakota Century Code is created and enacted as follows:

##### **32-49-01. Definitions.**

As used in this chapter:

1. "Consent" means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.
2. "Depicted individual" means an individual whose body is shown in whole or in part in an intimate image.
3. "Disclosure" or "disclose" means the transfer, publication, or distribution to another person.
4. "Identifiable" means recognizable by a person other than the depicted individual from:
  - a. An intimate image itself; or
  - b. An intimate image and identifying characteristic displayed in connection with the intimate image.
5. "Identifying characteristic" means information that may be used to identify a depicted individual.
6. "Individual" means a human being.
7. "Intimate image" means a photograph, film, video recording, or other similar medium showing:
  - a. The uncovered genitals, pubic area, anus, or female postpubescent nipple of a depicted individual; or
  - b. A depicted individual engaging in or being subjected to sexual conduct.

8. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
9. "Sexual conduct" includes:
  - a. Masturbation;
  - b. Genital, anal, or oral sex;
  - c. Sexual penetration of, or with, an object;
  - d. Bestiality; or
  - e. The transfer of semen onto a depicted individual.

### **32-49-02. Civil action - Definitions.**

1. As used in this section:
  - a. "Harm" includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.
  - b. "Private" means:
    - (1) Created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or
    - (2) Made accessible through theft of property, bribery, coercion, sexual extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.
2. Except as otherwise provided under section 32-49-03, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether the:
  - a. Depicted individual did not consent to the disclosure;
  - b. Intimate image was private; and
  - c. Depicted individual was identifiable.
3. The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under this chapter or the individual lacked a reasonable expectation of privacy:
  - a. Consent to creation of the image; or
  - b. Previous consensual disclosure of the image.
4. A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the

individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

### **32-49-03. Exceptions to liability.**

1. As used in this section:
  - a. "Child" means an unemancipated individual who is less than eighteen years of age.
  - b. "Parent" means an individual recognized as a parent under a law of this state other than this chapter.
2. A person is not liable under this chapter if the person proves that disclosure of, or a threat to disclose, an intimate image was:
  - a. Made in good faith:
    - (1) By law enforcement;
    - (2) In a legal proceeding; or
    - (3) For medical education or treatment;
  - b. Made in good faith in the reporting or investigation of:
    - (1) Unlawful conduct; or
    - (2) Unsolicited and unwelcome conduct;
  - c. Related to a matter of public concern or public interest; or
  - d. Reasonably intended to assist the depicted individual.
3. Subject to subsection 4, a defendant who is a parent or legal guardian of a child is not liable under this chapter for a disclosure or threatened disclosure of an intimate image of the child.
4. If a defendant asserts an exception to liability under subsection 3, the exception does not apply if the plaintiff proves the disclosure was:
  - a. Prohibited by law other than this chapter; or
  - b. Made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

### **32-49-04. Plaintiff's privacy.**

In an action under this chapter:

1. The court may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff under rule 3.4 of the North Dakota Rules of Court;

2. A plaintiff to whom subsection 1 applies shall file with the court and serve on the defendant a confidential information form that includes the excluded or redacted plaintiff's name and other identifying characteristics; and
3. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

### **32-49-05. Remedies.**

1. In an action under this chapter, a prevailing plaintiff may recover:
  - a. The greater of:
    - (1) Economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or
    - (2) Statutory damages not to exceed ten thousand dollars against each defendant found liable under this chapter for all disclosures and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount of statutory damages under this paragraph, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors;
  - b. An amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and
  - c. Exemplary damages.
2. In an action under this chapter, the court may award a prevailing plaintiff:
  - a. Reasonable attorney's fees and costs; and
  - b. Other remedies available by law, including injunctive relief.
3. This chapter does not affect a right or remedy available under a law of this state other than this chapter.

### **32-49-06. Statute of limitations.**

1. An action under subsection 2 of section 32-49-02 for:
  - a. An unauthorized disclosure may not be brought later than six years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and
  - b. A threat to disclose may not be brought later than six years from the date of the threat to disclose.
2. Except as otherwise provided in subsection 3, this section is subject to the provisions tolling limitations in chapter 28-01.

3. In an action under subsection 2 of section 32-49-02 by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in subsection 1 does not begin to run until the depicted individual attains eighteen years of age.

**32-49-07. Construction.**

This chapter must be construed to be consistent with the Communications Decency Act of 1996 [47 U.S.C. Section 230].

**SECTION 2. REPEAL.** Section 32-03-58 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023