JUDICIAL REMEDIES

CHAPTER 321

SENATE BILL NO. 2250

(Senators Klein, Kessel)
(Representatives Kasper, Klemin)

AN ACT to amend and reenact section 32-03-30 of the North Dakota Century Code, relating to damages for 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 injuries to timber.

1. For ~~wrongful~~willful and wanton 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~~.

2. For negligent injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages ~~are~~is a sum equal to the actual detriment.

Approved March 24, 2025

Filed March 25, 2025

CHAPTER 322

SENATE BILL NO. 2145

(Senators Roers, Barta, Axtman)
(Representatives Mitskog, O'Brien, Porter)

AN ACT to create and enact a new section to chapter 32-03 of the North Dakota Century Code, relating to providing immunity to an employee of a 988 suicide and crisis lifeline, 211 information and referral helpline, and 911 system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Behavior health instruction - Immunity from civil liability.

1. A person employed or contracted to provide a behavior health service, or any other service, through the 988 suicide and crisis lifeline, 211 information and referral helpline, or 911 system is not liable for any civil damages arising from providing the service to any individual unless the service provided constitutes willful and wanton misconduct or gross negligence.

2. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, or employees, nor does it create any claim for relief against any of these entities.

Approved March 14, 2025

Filed March 14, 2025

CHAPTER 323

SENATE BILL NO. 2290

(Senators Dwyer, Sickler, Cleary)
(Representatives Klemin, Heinert, Schneider)

AN ACT to amend and reenact sections 32-03.2-01 and 32-03.2-11 of the North Dakota Century Code, relating to when a court or jury may give exemplary damages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.2-01 of the North Dakota Century Code is amended and reenacted as follows:

32-03.2-01. Definition.

As used in this chapter~~, "fault"~~:

1. "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to tort liability or dram shop liability. The term also includes strict liability for product defect, breach of warranty, negligence or assumption of risk, misuse of a product for which the defendant otherwise would be liable, and failure to exercise reasonable care to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

2. "Malice" means:

   a. A direct intention to injure another; or

   b. A reckless disregard of the rights of another and any consequences.

SECTION 2. AMENDMENT. Section 32-03.2-11 of the North Dakota Century Code is amended and reenacted as follows:

32-03.2-11. When court or jury may give exemplary damages.

1. In any action for the breach of an obligation not arising from contract, when the defendant has been guilty by clear and convincing evidence of oppression, fraud, or ~~actual~~ malice, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits or deposition testimony showing the factual basis for the claim. The party opposing the motion may respond with affidavit or deposition testimony. If the court finds, after considering all submitted evidence, that there is sufficient evidence to support a finding by the trier of fact that a preponderance of the evidence proves oppression, fraud, or

~~actual~~ malice, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

2. If either party so elects, the trier of fact shall first determine whether compensatory damages are to be awarded before addressing any issues related to exemplary damages. Evidence relevant only to the claim for exemplary damages is not admissible in the proceeding on liability for compensatory damages. If an award of compensatory damages has been made, the trier of fact shall determine whether exemplary damages are to be awarded.

3. Evidence of a defendant's financial condition or net worth is not admissible in the proceeding on exemplary damages.

4. If the trier of fact determines that exemplary damages are to be awarded, the amount of exemplary damages may not exceed two times the amount of compensatory damages or two hundred fifty thousand dollars, whichever is greater; provided, however, that no award of exemplary damages may be made if the claimant is not entitled to compensatory damages. In a jury trial, the jury may not be informed of the limit on damages contained in this subsection. Any jury award in excess of this limit must be reduced by the court.

5. In order for a party to recover exemplary damages, the finder of fact shall find by clear and convincing evidence that the amount of exemplary damages awarded is consistent with the following principles and factors:

   a. Whether there is a reasonable relationship between the exemplary damage award claimed and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred;

   b. The degree of reprehensibility of the defendant's conduct and the duration of that conduct; and

   c. Any of the following factors as to which evidence is presented:

      (1) The defendant's awareness of and any concealment of the conduct;

      (2) The profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; and

      (3) Criminal sanctions imposed on the defendant for the same conduct that is the basis for the exemplary damage claim, these to be taken into account if offered in mitigation of the exemplary damage award.

6. Exemplary damages may not be awarded against a manufacturer or seller if the product's manufacture, design, formulation, inspection, testing, packaging, labeling, and warning complied with:

   a. Federal statutes existing at the time the product was produced;

b. Administrative regulations existing at the time the product was produced that were adopted by an agency of the federal government which had responsibility to regulate the safety of the product or to establish safety standards for the product pursuant to a federal statute; or

c. Premarket approval or certification by an agency of the federal government.

7. The defense in subsection 6 does not apply if the plaintiff proves by clear and convincing evidence that the product manufacturer or product seller:

a. Knowingly and in violation of applicable agency regulations withheld or misrepresented information required to be submitted to the agency, which information was material and relevant to the harm in question; or

b. Made an illegal payment to an official of the federal agency for the purpose of securing approval of the product.

8. Exemplary damages may be awarded against a principal because of an act by an agent only if at least one of the following is proved by clear and convincing evidence to be true:

a. The principal or a managerial agent authorized the doing and manner of the act;

b. The agent was unfit and the principal or a managerial agent was reckless in employing or retaining the agent;

c. The agent was employed in a managerial capacity and was acting in the scope of employment; or

d. The principal or managerial agent ratified or approved the doing and manner of the act.

9. In a civil action involving a motor vehicle accident resulting in bodily injury, it is sufficient for the trier of fact to consider an award of exemplary damages against the driver under the motion procedures provided in subsection 1 if clear and convincing evidence indicates that the accident was caused by a driver ~~who, within the five years immediately preceding the accident has been convicted for violation of section 39-08-01 and~~ who was operating or in physical control of a motor vehicle:

a. With an alcohol concentration of at least eight one-hundredths of one percent by weight;

b. Under the influence of a controlled substance unless a drug that predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to the driver;

c. Under the influence of alcohol and refused to take a test required under chapter 39-20; or

d. Under the influence of a volatile chemical as listed in section 19-03.1-22.1.

At the trial in an action in which the trier of fact will consider an award of exemplary damages, evidence that the driver has been convicted of violating section 39-08-01 or an equivalent statute or ordinance is admissible into evidence.

Approved March 25, 2025

Filed March 26, 2025

CHAPTER 324

SENATE BILL NO. 2310

(Senators Barta, Klein, Patten)
(Representatives Vollmer, Warrey)

AN ACT to amend and reenact sections 32-09.1-05, 32-09.1-10, and 32-09.1-16 of the North Dakota Century Code, relating to garnishments.

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~~forty 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.

SECTION 2. AMENDMENT. Section 32-09.1-10 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-10. Disclosure fees.

In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of ~~twenty-five dollars~~forty dollars as the fee for making an affidavit of disclosure.

SECTION 3. AMENDMENT. Section 32-09.1-16 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-16. Minimum judgment.

~~No~~A judgment may not be rendered against a garnishee if the judgment against the defendant is less than ~~twenty-five dollars~~forty dollars, exclusive of costs, rather, the garnishee shall be discharged.

Approved March 19, 2025

Filed March 20, 2025

CHAPTER 325

SENATE BILL NO. 2122

(Industry and Business Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 32-10.1 and a new section to chapter 32-19.2 of the North Dakota Century Code, relating to the Uniform Commercial Real Estate Receivership Act and trustees for commercial buildings during foreclosures; to provide for a legislative management study; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 32-10.1 of the North Dakota Century Code is created and enacted as follows:

32-10.1-01. Definitions.

As used in this chapter:

1. "Affiliate" means:

   a. With respect to an individual:

      (1) A companion of the individual;

      (2) A lineal ancestor or descendant, whether by blood or adoption, of:

         (a) The individual; or

         (b) A companion of the individual;

      (3) A companion of an ancestor or descendant described in paragraph 2;

      (4) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of those individuals; or

      (5) Any other individual occupying the residence of the individual; and

   b. With respect to a person other than an individual:

      (1) Another person that directly or indirectly controls, is controlled by, or is under common control with the person;

      (2) An officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person; or

      (3) A companion of, or an individual occupying the residence of, an individual described in paragraph 1 or 2.

2. "Companion" means:

   a. The spouse of an individual;

   b. The domestic partner of an individual; or

   c. Another individual in a civil union with an individual.

3. "Court" means the district court.

4. "Executory contract" means a contract under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach. The term includes a lease.

5. "Governmental unit" means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.

6. "Lien" means an interest in property which secures payment or performance of an obligation.

7. "Mortgage" means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if it also creates or provides for a lien on personal property.

8. "Mortgagee" means a person entitled to enforce an obligation secured by a mortgage.

9. "Mortgagor" means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

10. "Owner" means the person for whose property a receiver is appointed.

11. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

12. "Proceeds" means:

   a. Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property;

   b. Whatever is collected on, or distributed on account of, receivership property;

   c. Rights arising out of receivership property;

   d. To the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property; or

   e. To the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property.

13. "Property" means all of a person's right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the property.

14. "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this chapter or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

15. "Receivership" means a proceeding in which a receiver is appointed.

16. "Receivership property" means the property of an owner which is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

17. "Record" means information inscribed on a tangible medium or stored on an electronic or other medium and retrievable in perceivable form.

18. "Rents" means:

    a. Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

    b. Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

    c. Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

    d. Sums payable to terminate an agreement to possess or occupy real property of another person;

    e. Sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property; or

    f. Other sums payable under an agreement relating to the real property of another person which constitute rent under any other provision of law.

19. "Secured obligation" means an obligation the payment or performance of which is secured by a security agreement.

20. "Security agreement" means an agreement that creates or provides for a lien.

21. "Sign" means, with present intent to authenticate or adopt a record:

    a. To execute or adopt a tangible symbol; or

    b. To attach to or logically associate with the record an electronic sound, symbol, or process.

22. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

32-10.1-02. Notice and opportunity for hearing.

1. Except as provided under subsection 2, the court may issue an order under this chapter only after notice and opportunity for a hearing appropriate in the circumstances.

2. The court may issue an order under this chapter:

   a. Without prior notice if the circumstances require issuance of an order before notice is given;

   b. After notice and without a prior hearing if the circumstances require issuance of an order before a hearing is held; or

   c. After notice and without a hearing if no interested party timely requests a hearing.

32-10.1-03. Scope - Exclusions.

1. Except as provided under subsection 2 or 3, this chapter applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

2. This chapter does not apply to a receivership for an interest in real property improved by one to four dwelling units unless:

   a. The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence;

   b. The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes;

   c. The owner planned or is planning to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner's business; or

   d. The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.

3. This chapter does not apply to a receivership authorized by any other provision of law in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit except to the extent provided by the other law.

4. This chapter does not limit the authority of a court to appoint a receiver under any other provision of law.

5. Unless displaced by a particular provision of this chapter, the principles of law and equity supplement this chapter.

32-10.1-04. Power of court.

The court that appoints a receiver under this chapter has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

32-10.1-05. Appointment of receiver.

1. The court may appoint a receiver:

   a. Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property or its revenue-producing potential:

      (1) Is being subjected to or is in danger of waste, loss, dissipation, or impairment; or

      (2) Has been or is about to be the subject of a voidable transaction;

   b. After judgment:

      (1) To carry the judgment into effect; or

      (2) To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment;

   c. In an action in which a receiver for real property may be appointed on equitable grounds; or

   d. During the time allowed for redemption, to preserve real property sold in an execution or foreclosure sale and secure its rents to the person entitled to the rents.

2. In connection with the foreclosure or other enforcement of a mortgage, the court may appoint a receiver for the mortgaged property if:

   a. Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment;

   b. The mortgagor agreed in a signed record to appointment of a receiver on default;

   c. The owner agreed, after default and in a signed record, to appointment of a receiver;

   d. The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation;

   e. The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect; or

   f. The holder of a subordinate lien obtains appointment of a receiver for the property.

3. The court may condition appointment of a receiver without prior notice under subdivision a of subsection 2 of section 32-10.1-02 or without a prior hearing under subdivision b of subsection 2 of section 32-10.1-02 on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes the appointment was not justified. If the court later concludes the appointment was justified, the court shall release the security.

32-10.1-06. Disqualification from appointment as receiver - Disclosure of interest.

1. The court may not appoint a person as receiver unless the person submits a statement to the court under penalty of perjury that the person is not disqualified.

2. Except as provided under subsection 3, a person is disqualified from appointment as receiver if the person:

   a. Is an affiliate of a party;

   b. Has an interest materially adverse to an interest of a party;

   c. Has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver;

   d. Has a debtor-creditor relationship with a party; or

   e. Holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

3. A person is not disqualified from appointment as receiver because the person:

   a. Was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership;

   b. Is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or

   c. Maintains with a party a deposit account as defined under section 41-09-02.

4. A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

32-10.1-07. Receiver's bond - Alternative security.

1. Except as provided under subsection 2, a receiver shall post a bond with the court which:

   a. Is conditioned on the faithful discharge of the receiver's duties;

   b. Has one or more sureties approved by the court;

   c. Is in an amount the court specifies; and

d. Is effective as of the date of the receiver's appointment.

2. The court may approve the posting by a receiver with the court of alternative security, including a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.

3. The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

4. A claim against a receiver's bond or alternative security must be made not later than twelve months after the date the receiver is discharged.

32-10.1-08. Status of receiver as lien creditor.

On appointment of a receiver, the receiver has the status of a lien creditor under:

1. Chapter 41-09 as to receivership property that is personal property or fixtures; and

2. Chapter 47-19 as to receivership property that is real property.

32-10.1-09. Security agreement covering after-acquired property.

Except as otherwise provided by law, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered before the appointment to the same extent as if the court had not appointed the receiver.

32-10.1-10. Collection and turnover of receivership property.

1. Unless the court orders otherwise, on demand by a receiver:

   a. A person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

   b. Subject to subsection 3, a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

2. A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

3. If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

4. Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction a person's failure to turn the property over when required by this section as civil contempt.

32-10.1-11. Powers and duties of receiver.

1. Except as limited by court order or any other provision of law, a receiver may:

   a. Collect, control, manage, conserve, and protect receivership property;

   b. Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business;

   c. In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

   d. Assert a right, claim, cause of action, or defense of the owner which relates to receivership property;

   e. Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties;

   f. On subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership;

   g. Engage a professional under section 32-10.1-14;

   h. Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state; and

   i. Exercise any power conferred by court order, this chapter, or any other provision of law.

2. With court approval, a receiver may:

   a. Incur debt for the use or benefit of receivership property other than in the ordinary course of business;

   b. Make improvements to receivership property;

   c. Use or transfer receivership property other than in the ordinary course of business under section 32-10.1-15;

   d. Adopt or reject an executory contract of the owner under section 32-10.1-16;

   e. Pay compensation to the receiver under section 32-10.1-20, and to each professional engaged by the receiver under section 32-10.1-14;

   f. Recommend allowance or disallowance of a claim of a creditor under section 32-10.1-19; and

   g. Make a distribution of receivership property under section 32-10.1-19.

3. A receiver shall:

a. Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property;

b. Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property;

c. File with the county recorder wherein the property is located a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description;

d. Disclose to the court any fact arising during the receivership which would disqualify the receiver under section 32-10.1-06; and

e. Perform any duty imposed by court order, this chapter, or any other provision of law.

4. The powers and duties of a receiver may be expanded, modified, or limited by court order.

32-10.1-12. Duties of owner.

1. An owner shall:

a. Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties;

b. Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control;

c. Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control;

d. On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership; and

e. Perform any duty imposed by court order, this chapter, or any other provision of law.

2. If an owner is a person other than an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the owner.

3. If a person knowingly fails to perform a duty imposed by this section, the court may:

a. Award the receiver actual damages caused by the person's failure, reasonable attorney's fees, and costs; and

b. Sanction the failure as civil contempt.

32-10.1-13. Stay - Injunction.

1. Except as otherwise provided in subsection 4 or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding:

   a. To obtain possession of, exercise control over, or enforce a judgment against receivership property; and

   b. To enforce a lien against receivership property to the extent the lien secures a claim against the owner which arose before entry of the order.

2. Except as otherwise provided in subsection 4, the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.

3. A person whose act, action, or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.

4. An order under subsection 1 or 2 does not operate as a stay or injunction of:

   a. An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver;

   b. An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property;

   c. Commencement or continuation of a criminal proceeding;

   d. Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power; or

   e. Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

5. The court may void an act that violates a stay or injunction under this section.

6. If a person knowingly violates a stay or injunction under this section, the court may:

   a. Award actual damages caused by the violation, reasonable attorney's fees, and costs; and

   b. Sanction the violation as civil contempt.

32-10.1-14. Engagement and compensation of professional.

1. With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver. The receiver shall disclose to the court:

   a. The identity and qualifications of the professional;

b. The scope and nature of the proposed engagement;

c. Any potential conflict of interest; and

d. The proposed compensation.

2. A person is not disqualified from engagement under this section because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party. This chapter does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

3. A receiver or professional engaged under subsection 1 shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of expenses. The receiver shall pay the amount approved by the court.

32-10.1-15. Use or transfer of receivership property not in ordinary course of business.

1. As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

2. With court approval, a receiver may use receivership property other than in the ordinary course of business.

3. With court approval, a receiver may transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provides otherwise, a sale under this section is free of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption but is subject to a senior lien.

4. A lien on receivership property which is extinguished by a transfer under subsection 3 attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

5. A transfer under subsection 3 may occur by means other than a public auction sale. A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

6. A reversal or modification of an order approving a transfer under subsection 3 does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

32-10.1-16. Executory contract.

1. As used in this section, "timeshare interest" means an interest having a duration of more than three years which grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.

2. Except as otherwise provided in subsection 8, with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the contract.

3. A receiver's performance of an executory contract before court approval under subsection 2 of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the contract.

4. A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection 2 to adopt the contract.

5. A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection 2. Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of:

   a. The time set for submitting a claim in the receivership; or

   b. Thirty days after the court approves the rejection.

6. If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under any other provision of law, the receiver may assign the contract with court approval.

7. If a receiver rejects under subsection 2 an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may:

   a. Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or

   b. Retain the purchaser's right to possession under the contract, and in that case the purchaser shall continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

8. A receiver may not reject an unexpired lease of real property under which the owner is the landlord if:

   a. The tenant occupies the leased premises as the tenant's primary residence;

   b. The receiver was appointed at the request of a person other than a mortgagee; or

c. The receiver was appointed at the request of a mortgagee and:

(1) The lease is superior to the lien of the mortgage;

(2) The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease;

(3) The mortgagee has consented to the lease, either in a signed record or by its failure timely to object that the lease violated the mortgage; or

(4) The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know the lease violated the mortgage.

32-10.1-17. Defenses and immunities of receiver.

1. A receiver is entitled to all defenses and immunities provided by any other provision of law for an act or omission within the scope of the receiver's appointment.

2. A receiver may be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

32-10.1-18. Interim report of receiver.

A receiver may file or, if ordered by the court, shall file an interim report that includes:

1. The activities of the receiver since appointment or a previous report;

2. Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver;

3. Receipts and dispositions of receivership property;

4. Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses; and

5. Any other information required by the court.

32-10.1-19. Notice of appointment - Claim against receivership - Distribution to creditors.

1. Except as otherwise provided in subsection 6, a receiver shall give notice of appointment of the receiver to creditors of the owner by:

a. Deposit for delivery through first-class mail or other commercially reasonable delivery method to the last-known address of each creditor; and

b. Publication as directed by the court.

2. Except as otherwise provided in subsection 6, the notice required under subsection 1 must specify the date by which each creditor holding a claim against the owner which arose before appointment of the receiver must submit the claim to the receiver. The date specified must be at least ninety days after the later of notice under subdivision a of subsection 1 or last publication under subdivision b of subsection 1. The court may extend the period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

3. A claim submitted by a creditor under this section must:

   a. State the name and address of the creditor;

   b. State the amount and basis of the claim;

   c. Identify any property securing the claim;

   d. Be signed by the creditor under penalty of perjury; and

   e. Include a copy of any record on which the claim is based.

4. An assignment by a creditor of a claim against the owner is effective against the receiver only if the assignee gives timely notice of the assignment to the receiver in a signed record.

5. At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection. The court shall allow or disallow the claim according to any other provision of law.

6. If the court concludes receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that:

   a. The receiver need not give notice under subsection 1 of the appointment to all creditors of the owner, but only such creditors as the court directs; and

   b. Unsecured creditors need not submit claims under this section.

7. Subject to section 32-10.1-20:

   a. A distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's priority under any other provision of law; and

   b. A distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs according to any other provision of law.

32-10.1-20. Fees and expenses.

1. The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

2. The court may order one or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney's fees and costs:

   a. A person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses.

   b. A person whose conduct justified or would have justified the appointment of the receiver under subdivision a of subsection 1 of section 32-10.1-05.

32-10.1-21. Removal of receiver - Replacement - Termination of receivership.

1. The court may remove a receiver for cause.

2. The court shall replace a receiver that dies, resigns, or is removed.

3. If the court finds that a receiver that resigns or is removed, or the representative of a receiver who is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

4. The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds appointment of the receiver was improvident or the circumstances no longer warrant continuation of the receivership. If the court finds the appointment was sought wrongfully or in bad faith, the court may assess against the person that sought the appointment:

   a. The fees and expenses of the receivership, including reasonable attorney's fees and costs; and

   b. Actual damages caused by the appointment, including reasonable attorney's fees and costs.

32-10.1-22. Final report of receiver - Discharge.

1. On completion of a receiver's duties, the receiver shall file a final report that includes:

   a. A description of the activities of the receiver in the conduct of the receivership;

   b. A list of receivership property at the commencement of the receivership and any receivership property received during the receivership;

   c. A list of disbursements, including payments to professionals engaged by the receiver;

   d. A list of dispositions of receivership property;

   e. A list of distributions made or proposed to be made from the receivership for creditor claims;

   f. If not filed separately, a request for approval of the payment of fees and expenses of the receiver; and

g. Any other information required by the court.

2. If the court approves a final report filed under subsection 1 and the receiver distributes all receivership property, the receiver is discharged.

32-10.1-23. Receivership in another state - Ancillary proceeding.

1. The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this chapter, if:

   a. The person or nominee would be eligible to serve as receiver under section 32-10.1-06; and

   b. The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

2. The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.

3. Unless the court orders otherwise, an ancillary receiver appointed under subsection 1 has the rights, powers, and duties of a receiver appointed under this chapter.

32-10.1-24. Effect of enforcement by mortgagee.

1. A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation does not:

   a. Make the mortgagee a mortgagee in possession of the real property;

   b. Make the mortgagee an agent of the owner;

   c. Constitute an election of remedies that precludes a later action to enforce the secured obligation;

   d. Make the secured obligation unenforceable;

   e. Limit any right available to the mortgagee with respect to the secured obligation; or

   f. Except as otherwise provided in subsection 2, bar a deficiency judgment in accordance with any other provision of law governing or relating to a deficiency judgment.

2. If a receiver sells receivership property that under subsection 3 of section 32-10.1-15 is free of a lien, the ability of a creditor to enforce an obligation that had been secured by the lien is subject to the law of this state other than this chapter relating to a deficiency judgment.

32-10.1-25. Uniformity of application and construction.

In applying and construing this chapter, a court shall consider the promotion of uniformity of the law among states that enact it.

32-10.1-26. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. Section 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that act, [15 U.S.C. Section 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that act, [15 U.S.C. Section 7003(b)].

SECTION 2. A new section to chapter 32-19.2 of the North Dakota Century Code is created and enacted as follows:

Applicability.

This chapter does not apply to a commercial real estate receivership under chapter 32-10.1.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - RECEIVER. During the 2025-26 interim, the legislative management shall consider studying all provisions of the North Dakota Century Code relating to receivers to determine whether the provisions should be consolidated into a single chapter, including a review of chapters 32-10, on receivers; 32-19.2, on trustees for commercial buildings during foreclosures; and 32-20, on foreclosure of liens on personal property, or any other regulations regarding receivers. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

SECTION 4. APPLICATION. Section 1 of this Act does not apply to a receivership for which the receiver was appointed before the effective date of this Act.

Approved March 24, 2025

Filed March 25, 2025

CHAPTER 326

HOUSE BILL NO. 1142

(Representatives Pyle, Stemen, M. Ruby, Schauer)
(Senators Roers, Thomas)

AN ACT to amend and reenact sections 32-12.1-03 and 32-12.2-02 of the North Dakota Century Code, relating to the statutory caps for liability of political subdivisions and the state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

32-12.1-03. Liability of political subdivisions - Limitations. (Effective through ~~July 31, 2027~~June 30, 2026)

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 ~~three hundred seventy-five thousand~~four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand 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. ~~The liability limits under this subsection must be adjusted annually as follows:~~

   ~~a. On July 1, 2023, 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, 2024, 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, 2025, 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.~~

~~d. On July 1, 2026, a total of five hundred thousand dollars per person and two million dollars per occurrence.~~

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.

Liability of political subdivisions - Limitations. (Effective after ~~July 31, 2027~~June 30, 2026)

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 ~~two hundred fifty thousand~~five hundred thousand dollars per person and ~~one~~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.

SECTION 2. AMENDMENT. Section 32-12.2-02 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-02. Liability of the state - Limitations - Statute of limitations. (Effective through ~~July 31, 2027~~June 30, 2026)

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly. The enactment of a law, rule, or regulation to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.

2. The liability of the state under this chapter is limited to a total of ~~three hundred seventy-five thousand~~four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the one million eight hundred seventy-five thousand dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered. ~~The liability limits under this subsection must be adjusted annually as follows:~~

~~a. On July 1, 2023, 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, 2024, 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, 2025, 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.~~

~~d. On July 1, 2026, a total of five hundred thousand dollars per person and two million dollars per occurrence.~~

3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:

   a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.

   b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.

   c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.

   d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.

   e. A claim relating to injury directly or indirectly caused by a person who is not employed by the state.

   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 state's law enforcement operations.

g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:

(1) Direct contact between the state and the injured party.

(2) An assumption by the state, 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 state that inaction of the state could lead to harm.

(4) The injured party's justifiable reliance on the state's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the state, or the state action increases the risk of harm.

h. A claim resulting from the assessment and collection of taxes.

i. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.

j. A claim resulting from any injury caused by a wild animal in its natural state.

k. A claim resulting from the condition of unimproved real property owned or leased by the state.

l. A claim resulting from the loss of benefits or compensation due under a program of public assistance.

m. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.

n. A claim resulting from damage to the property of a patient or inmate of a state institution.

o. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.

p. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.

q. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.

r. A claim for damage to property owned by the state.

s. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the loss is not covered by the state employee's personal insurance or by the vehicle rental company.

4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.

5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of April 22, 1995.

Liability of the state - Limitations - Statute of limitations. (Effective after ~~July 31, 2027~~June 30, 2026)

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly. The enactment of a law, rule, or regulation to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.

2. The liability of the state under this chapter is limited to a total of ~~two hundred fifty~~five hundred thousand dollars per person and ~~one~~two million dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the ~~one~~two million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered.

3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:

   a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.

   b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.

   c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.

d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.

e. A claim relating to injury directly or indirectly caused by a person who is not employed by the state.

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 state's law enforcement operations.

g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:

(1) Direct contact between the state and the injured party.

(2) An assumption by the state, 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 state that inaction of the state could lead to harm.

(4) The injured party's justifiable reliance on the state's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the state, or the state action increases the risk of harm.

h. A claim resulting from the assessment and collection of taxes.

i. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.

j. A claim resulting from any injury caused by a wild animal in its natural state.

k. A claim resulting from the condition of unimproved real property owned or leased by the state.

l. A claim resulting from the loss of benefits or compensation due under a program of public assistance.

m. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.

n. A claim resulting from damage to the property of a patient or inmate of a state institution.

o. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.

p. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.

q. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.

r. A claim for damage to property owned by the state.

s. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the loss is not covered by the state employee's personal insurance or by the vehicle rental company.

4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.

5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of April 22, 1995.

Approved March 21, 2025

Filed March 24, 2025

CHAPTER 327

SENATE BILL NO. 2233

(Senators Sickler, Cory, Larson)
(Representative Vetter)

AN ACT to amend and reenact section 32-12.2-04 of the North Dakota Century Code, relating to notice requirements for claims against the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.2-04 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-04. Notice required - Payment of claims.

1. a. A person bringing a claim against the state or a state employee for an injury shall present to the director of the office of management and budget within one hundred eighty days after the alleged injury is discovered or reasonably should have been discovered a written notice of the alleged claim stating the time, place, and circumstances of the ~~injury~~claim, the names of any state employees known to be involved, and the amount of compensation or other relief demanded.

   b. If the claim is one for serious injury, notice must be presented to the director of the office of management and budget within one year after the alleged serious injury is discovered or reasonably should have been discovered. For purposes of this section, "serious injury" has the meaning as provided in section 26.1-41-01.

   c. The time for giving the notice does not include the time during which a person injured is incapacitated by the injury from giving the notice. ~~If the claim is one for death, the notice may be presented by the personal representative, surviving spouse, or next of kin within one year after the alleged injury resulting in the death.~~

   ~~c.~~d. The time for giving the notice is waived for a claim 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.

2. After receipt of notice of a claim, the director of the office of management and budget shall, in a timely manner, notify the head of the state entity involved, the attorney general, and any insurer or self-insurance pool providing coverage for that state entity. For claims over ten thousand dollars, the director, in consultation with the head of the state entity involved and the attorney general, may settle claims covered by the state risk management fund if the claim is made in writing and settlement is approved by the attorney general. The director of the office of management and budget may independently settle any claim covered by the state risk management fund if the claim is made in writing and the settlement is for not more than ten thousand dollars.

3. A claim shall be paid out of the risk management fund unless that claim is covered by insurance or participation in a government self-insurance pool. All necessary loss adjustment expenses must be included as a component of the claim and be paid out of the fund. Loss adjustment expenses include investigation costs and attorney's fees associated with a claim.

4. The acceptance by the claimant of a settlement is final and conclusive on the claimant and constitutes a complete release of any claim against the state and the state employee whose act or omission gave rise to the claim.

5. A person bringing a legal action against the state or a state employee for a claim shall deliver a copy of the summons, complaint, or other legal pleading in which the claim is first asserted in the action to the director of the office of management and budget at the time the summons, complaint, or other legal pleading is served in the action. This provision is in addition to any applicable rule of civil procedure.

Approved April 2, 2025

Filed April 3, 2025

CHAPTER 328

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 subsection 5 of section 32-12.2-15 of the North Dakota Century Code, relating to contracts limiting liability to the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 32-12.2-15 of the North Dakota Century Code is amended and reenacted 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 that an improper contractual obligation will be imposed against the agency or 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~~twenty thousand dollars in cost.

Approved March 18, 2025

Filed March 18, 2025

CHAPTER 329

SENATE BILL NO. 2379

(Senators Boehm, Magrum, Wobbema)
(Representatives D. Johnston, Koppelman, Fisher)

AN ACT to amend and reenact section 32-15-06 of the North Dakota Century Code, relating to the surveying process during eminent domain proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-15-06 of the North Dakota Century Code is amended and reenacted as follows:

32-15-06. Entry for making surveys.

1. a. In ~~all cases when~~a case in which land is required for public use, the person ~~or corporation,~~ or the person's ~~or corporation's~~ agents~~,~~ in charge of ~~such~~the use may survey and locate the ~~same, but it~~land after providing the owner on the tax list a written notice of intent to survey. The notice must contain the name, proposed completion date, type, proposed route or location of the project associated with the survey, nature of the work the person in charge of the public use intends to complete, and the name, telephone number, physical address, and mailing address of the person in charge of the public use.

   b. The person in charge of the public use shall deliver the notice to the owner on the tax list through certified mail. The person in charge of the public use may not survey the land until thirty days after delivery of the notice, unless the owner consents to an earlier survey date. If the person in charge of the public use fails to survey the land within ninety days of delivery of the notice, the person shall deliver a new notice of intent to survey through certified mail. A survey conducted under a subsequently issued notice of intent to survey must be conducted in accordance with the timeline established under this subdivision.

2. The survey and location of the condemner's project must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to ~~the provisions of~~ section 32-15-21. ~~Whoever is~~

3. The person in charge of ~~such~~the public use may enter upon the land and make examinations, surveys, and maps ~~thereof~~of the land in accordance with subsection 1, and ~~such~~the entry ~~constitutes no~~does not constitute a claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

Approved April 8, 2025

Filed April 8, 2025