

JUDICIAL REMEDIES

CHAPTER 293

SENATE BILL NO. 2219
(Nothing)

LIABILITY OF PARENTS

AN ACT to amend and reenact section 32-03-39 of the North Dakota Century Code, to increase the liability of a parent of a minor who maliciously or willfully destroys property of another.

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

SECTION 1. AMENDMENT.) Section 32-03-39 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-03-39. PARENTAL RESPONSIBILITY FOR MINOR CHILDREN - RECOVERY LIMITATIONS.) Any municipal corporation, county, township, school district, or department of the state of North Dakota, or any person, partnership, corporation, association, or religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in a civil action in an amount not to exceed one thousand dollars in a court of competent jurisdiction from the parents of any minor, living with a parent, who shall maliciously or willfully destroy property, real, personal or mixed, belonging to such municipal corporation, county, township, school district, or department of the state of North Dakota, or person, partnership, corporation, association, or religious organization.

Recovery shall be limited to actual damages in an amount not to exceed one thousand dollars, in addition to taxable court costs.

Approved March 13, 1975

CHAPTER 294

HOUSE BILL NO. 1059
(Atkinson, Rundle)
(From Legislative Council Study)

ENVIRONMENTAL LAW ENFORCEMENT

AN ACT to provide for the enforcement of environmental laws in the state of North Dakota through actions brought in the district courts.

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

SECTION 1. SHORT TITLE.) This Act may be cited and shall be known as the North Dakota Environmental Law Enforcement Act of 1975.

SECTION 2. LEGISLATIVE INTENT AND PURPOSE.) The legislative assembly of North Dakota enacts this Environmental Law Enforcement Act in recognition of the vital role played by environmental laws in maintaining the health, safety, and general welfare of the state's citizens; the need to maintain a sound system of law, order, and justice; and the need to provide relief to those aggrieved by a failure of others to abide by or enforce the state's environmental laws.

SECTION 3. DEFINITIONS.) As used in this Act, unless a different meaning clearly appears from the context:

1. "Aggrieved" shall mean the suffering of an injury in fact as a result of the alleged violation of a statute, rule, or regulation, and the injury is of the type the statute, rule, or regulation in question was intended to regulate or protect against. It is not necessary for the injury to be economic in nature. The injury is sufficient if it has harmed the party's use and enjoyment of the protected natural resources in a manner different from the harm to the general public.
2. "Environmental statute, rule, or regulation" shall mean any statute, rule, or regulation of the state for the protection of the air, water, and other natural resources, including but not limited to land, minerals, and wildlife, from pollution, impairment, or destruction.

3. "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, or fiduciary.
4. "State agency" shall mean any state agency, board, commission, council, officer, office, department, or division.

SECTION 4. CUMULATIVE REMEDIES.) The remedies provided by this Act shall be cumulative and shall not replace statutory or common law remedies.

SECTION 5. ENFORCEMENT POWERS OF ATTORNEY GENERAL.) The attorney general shall have the authority to enforce, in the same manner as state's attorneys, any state environmental statute, rule, or regulation.

SECTION 6. WHO MAY SUE - DEFENDANTS - EXCEPTION TO RECOVERY OF DAMAGES.) Any state agency, with the approval of the attorney general; any person; or any county, city, township, or other political subdivision, aggrieved by the violation of any environmental statute, rule, or regulation of this state may bring an action in the appropriate district court, either to enforce such statute, rule, or regulation, or to recover any damages that have occurred as a result of the violation, or for both such enforcement and damages. Such action may be brought against any person, state agency, or county, city, township, or other political subdivision allegedly engaged in such violation. However, no damages may be recovered against any state agency, county, city, township, or other political subdivision, except as otherwise provided by law.

SECTION 7. NOTICE TO BE PROVIDED.) Any person, any state agency, or any county, city, township, or other political subdivision, before commencing any action pursuant to section 6 of this Act, shall give thirty days' notice by certified mail of intent to file suit and of the alleged violation to the person alleged to have violated the statute, rule, or regulation; to the state agency, or to the political subdivision responsible for the supervision or enforcement of the statute, rule, or regulation alleged to have been violated; to the state's attorney of the county in which the alleged violation occurred; and to the attorney general. This section shall not apply to emergency proceedings, brought under any environmental statute, rule, or regulation, necessary to protect the health, safety, or welfare of any person.

SECTION 8. BOND.) The court may order the complainant to post a cash bond in an amount not to exceed five hundred dollars to pay any cost or judgment that might be rendered adverse to a complainant in any action brought under this Act.

SECTION 9. INTERVENTION IN ACTION.) Any state agency that receives a notice pursuant to section 7 of this Act shall be entitled to intervene as a matter or right in the action unless such action is commenced solely to recover damages for alleged violations.

SECTION 10. COSTS.) If the court finds an action brought under this Act to have been frivolous, it shall award costs to the defendants. Otherwise, the court may apportion costs among the parties as the interests of justice require.

SECTION 11. RELIEF GRANTED.) In any action brought under this Act, the court may:

1. Grant the relief specified in the environmental statute alleged to have been violated or pursuant to which the rule or regulation alleged to have been violated was promulgated.
2. Grant temporary or permanent equitable relief.
3. Award damages.
4. Enter any order it deems necessary to enforce compliance with any environmental statute, rule, or regulation of this state.

Approved March 25, 1975

CHAPTER 295

HOUSE BILL NO. 1541
(Royse)

POLITICAL SUBDIVISION TORT LIABILITY

AN ACT to provide for the liability of political subdivisions, to set limitations upon such liability, to establish a political subdivisions liability fund and to limit the liability of the fund, to provide for notice and a statute of limitations, to provide a procedure for making payments from the fund for claims and judgments against political subdivisions, to allow the attorney general to administer and defend the fund, to authorize the state and political subdivisions to purchase insurance coverage, to declare legislative intent, to provide an appropriation, to declare an emergency, and to provide an expiration date.

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

SECTION 1. DEFINITIONS.) As used in this Act, unless the context or subject matter otherwise requires:

1. "Claim" means any claim brought against a political subdivision, as permitted by this Act, for an injury caused by an act or omission of a political subdivision or an employee of the political subdivision acting within the scope of his employment or scope of his office.
2. "Employee" means any officer, employee, or servant of a political subdivision, whether elected or appointed and whether or not compensated, but shall not include an independent contractor, or any person performing tasks, the details of which the political subdivision has no right to control.
3. "Fund" means the political subdivisions liability fund, as provided by this Act.
4. "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person or estate that would be actionable if inflicted by a private person or his agent.
5. "Political subdivision":

- a. Shall include all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of this state for local government or other public purposes, including, but not limited to, county fair associations, county hospital associations, county park districts and joint county park districts, county special service districts, Garrison diversion conservancy district, health districts, irrigation districts, reclamation districts, rural fire protection districts, soil conservation districts, and water management districts, except that no new units of government or political subdivisions are created or authorized by this Act.
- b. Shall not include, nor shall be construed to mean, either the state of North Dakota or any of the several agencies, bureaus, boards, commissions, institutions, councils, courts, departments, or offices of government which collectively constitute the government of the state of North Dakota.

SECTION 2. LIABILITY OF POLITICAL SUBDIVISIONS - LIMITATIONS.)

1. Each political subdivision shall be liable for money damages for injuries when such injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of his employment or office under circumstances where such 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 where such political subdivision, if a private person, would be liable to the claimant.
2. Such liability is subject to the provisions of this Act, and liability shall not extend to punitive or exemplary damages. The liability of political subdivisions under the provisions of this Act shall be limited to twenty thousand dollars per person and one hundred thousand dollars for any single occurrence for injury.

A political subdivision shall not be liable for any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved be abused. The sovereign immunity of the state is not waived in any manner by this Act, and the provisions of this Act shall not be construed to abrogate the immunity of the state. Nothing contained in this Act shall be construed to obligate the fund or political subdivisions for an amount which is more than the

limitations upon liability imposed by this Act. Any payments to persons under the provisions of this Act shall constitute payment in full of any compromised claim or judgment or any final judgment under the provisions of this Act.

SECTION 3. POLITICAL SUBDIVISIONS LIABILITY FUND - FUND NOT LIABLE FOR MOTOR VEHICLES.) There is hereby created in the office of the state treasurer a political subdivisions liability fund which shall be used to pay compromised claims and judgments and final judgments against any political subdivision of this state as provided by this Act, and which shall be administered by the attorney general. No payment from the fund for a compromised claim or judgment or a final judgment against a political subdivision shall exceed the liability limitations imposed by this Act. The fund shall not be liable for any claims for injuries arising out of, or by reason of, the use or operation of motor vehicles or aircraft by a political subdivision. Political subdivisions using or operating motor vehicles or aircraft may purchase insurance coverage for their own protection and for the protection of their employees in the manner provided by section 39-01-08, except that political subdivisions shall be liable for such injuries to the extent of the liability limitations imposed by this Act, irregardless of whether such political subdivision has purchased such insurance coverage. In any action arising out of, or by reason of, the use or operation of motor vehicles or aircraft by a political subdivision, the provisions of sections 5 through 10, inclusive, shall not apply.

SECTION 4. NOTICE - STATUTE OF LIMITATIONS.)

1. Except as otherwise provided, any claim against a political subdivision for injuries alleged to have arisen under the provisions of this Act shall be filed, within ninety days after the alleged occurrence of such injury, in the office of the county auditor. Such claim shall be signed and verified by the claimant and shall describe the time, place, cause, and extent of the damage or injury, shall contain an abstract of the facts upon which the claim is based, and shall specify the amount of damages claimed therefor. If it shall appear by the affidavit of a reputable physician that the injured person was rendered, by the injury complained of, mentally incapable of making the claim within the time specified in this section, the claim may be filed, if the claimant survives, within ninety days after the claimant becomes competent to make the same. The affidavit of the physician shall be prima facie evidence of mental incapacity, and may be controverted on the trial of an action for such damages. If the injured person shall die within ninety days after the happening of the injury, or before he shall become mentally competent to make the claim, the claim may be made within ninety days after the death of the injured person by any person having knowledge of the facts, and the person making such claim shall set forth therein specifically the facts relating to the injury of which

he has personal knowledge and shall verify such facts positively. The facts of which the person making the claim has no personal knowledge shall be verified to the best of his knowledge, information, and belief. Notice of such claim shall also be given by the claimant to the political subdivision concerned and to the attorney general within ten days of filing such claim with the county auditor.

2. An action brought under this Act must be commenced within three years after the cause of action has accrued.

SECTION 5. POLITICAL SUBDIVISION TO DEFEND SUIT - APPROVAL OF ATTORNEY GENERAL.) Upon receipt of notice of a claim for injuries alleged to have arisen under the provisions of this Act, a political subdivision shall retain an attorney to represent and defend the political subdivision in any proceedings concerning such a claim. The attorney for the political subdivision may propose a compromise of such a claim and may defend the political subdivision in any action brought upon the claim. The attorney general shall review any such proposed compromise, and if the attorney general, in his discretion, determines that the alleged facts concerning the claim warrant such a compromise agreement, he shall authorize a compromise agreement in the manner prescribed by section 9.

SECTION 6. CLAIMS AGAINST FUND.) When any person shall obtain a final judgment in any court of competent jurisdiction against any political subdivision pursuant to this Act, such person shall, upon notice to the attorney general, file an application in the court in which the judgment was entered for an order to direct payment of such a judgment from the fund. The court shall conduct a hearing upon the filing of the application, which may be continued within the discretion of the court for such period as the court may deem appropriate. The applicant shall show that he has obtained a final judgment against a political subdivision pursuant to this Act and shall state the amount thereof. After a hearing upon the filing of an application, the court may order payment of a final judgment from the fund only upon a determination that the person has a valid cause of action against a political subdivision pursuant to this Act and has otherwise complied with the provisions of this Act. The judgment shall be only prima facie evidence of such a cause of action and for the purposes of this Act shall not be conclusive. The attorney general may appear and be heard on any application from the fund and may show cause, if any there be, why an order should not be made, pursuant to this section and sections 7 and 8.

SECTION 7. ORDER FOR PAYMENT.) If, after a hearing, the court finds that said claim should be levied against the fund, the court shall enter an order directing the state treasurer to pay from said fund the amount of the judgment against a political subdivision, within the limits provided by this Act.

SECTION 8. APPEAL FROM JUDGMENT OR ORDER.) A judgment or order made pursuant to this Act shall be subject to appeal to the supreme court by the political subdivision or the attorney general in the manner provided by law.

SECTION 9. COMPROMISE OF CLAIM OR JUDGMENT.) At any time prior to payment of a final judgment from the fund, the attorney general, in his discretion, may enter into an agreement with a person making a claim against a political subdivision or a holder of a final judgment against a political subdivision for a compromise of such a claim or judgment for a sum which is less than the amount of the claim or judgment. The attorney general shall reduce such an agreement to writing and shall certify the agreement to the state treasurer, who shall pay the amount specified in the agreement, not to exceed the limitations imposed by this Act.

SECTION 10. CLAIMS SATISFIED IN ORDER OF FILING.) In the event that there is insufficient moneys in the fund to satisfy the order or compromise agreement at the time such order or judgment is filed, the order shall be registered by the state treasurer and shall be paid when the moneys are available in said fund. Subsequent orders or agreements shall be paid therefrom in the order of registration.

SECTION 11. STATE AND POLITICAL SUBDIVISIONS AUTHORIZED TO PURCHASE INSURANCE.) The state of North Dakota or any department, agency, or bureau, and any political subdivision of the state, is hereby authorized to insure against claims of loss, damage, or injury for its own protection and for the protection of any employee. Except as provided by section 3, the limitations on claims against political subdivisions payable by the fund, as provided by this Act, shall be deductible from any insurance coverage purchased by a political subdivision in the manner provided by this section, and no political subdivision shall be required to purchase insurance coverage for amounts for which the fund may be held liable. If a premium savings will result therefrom, such policies of insurance may be taken out for more than one year, but in no event beyond a period of five years.

1. If the state or any department, agency, or bureau thereof shall purchase insurance pursuant to this section, then the purchaser shall waive its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of such coverage.
2. If a political subdivision shall purchase insurance pursuant to this section which shall exceed the limitations upon liability imposed by this Act, the political subdivision shall waive the limitations of the liability imposed by this Act only to the extent that such coverage exceeds such limitations. Where a political subdivision has purchased insurance coverage pursuant to this section, the fund shall be liable for a claim or judgment in the manner and subject to the limitations provided by this

Act, and the political subdivision which has purchased insurance coverage shall be liable for any amount contained in a final judgment which shall exceed the limitations imposed by this Act, but only as to the types of coverage purchased.

If any dispute exists concerning the amount or nature of the insurance coverage, the dispute shall be tried separately. This Act confers no right on a claimant to sue an insurer directly. The insurance coverage authorized by this Act may be in addition to insurance coverage which may be purchased by the state or any department, agency, or bureau thereof, or a political subdivision under any other provision of law.

SECTION 12. APPROPRIATION.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000.00, or so much thereof as may be necessary, to the political subdivisions liability fund for the purpose of paying compromised claims and judgments and final judgments according to the provisions of this Act for the period beginning on the effective date of this Act, and ending June 30, 1977.

SECTION 13. LEGISLATIVE INTENT.) It is the intent of the legislature that this Act is to provide the political subdivisions of this state with temporary protection only until July 1, 1977. This Act is deemed to be in the best interest of the people of this state and is an exercise of the police powers. This Act is a temporary response to the recent judicial decision which held that the doctrine of governmental immunity from tort liability as it applies to political subdivisions should not be sustained in this state. It is the policy of the legislature to encourage political subdivisions to continue to maintain present liability insurance coverage pending a legislative council study of governmental immunity and to encourage political subdivisions to maintain insurance coverage for motor vehicles and aircraft.

SECTION 14. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

SECTION 15. EXPIRATION DATE.) The provisions of this Act shall remain in effect through June 30, 1977, and shall thereafter be of no force and effect.

Approved April 8, 1975