

JUDICIAL PROCEDURE, CIVIL

CHAPTER 359

SENATE BILL NO. 2125
(Committee on Judiciary)
(At the request of the Attorney General)

LIMITATION ON ACTIONS AGAINST THE STATE

AN ACT to create and enact a new section to chapter 28-01 of the North Dakota Century Code, relating to the limitation on actions against the state.

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

SECTION 1. A new section to chapter 28-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Actions against state - Limitation. When not otherwise specifically provided by law, an action against the state or its employees and officials acting within the scope of their employment or office must be commenced within six years after the cause of action has accrued. This may not be construed as a waiver of immunity.

Approved April 8, 1983

CHAPTER 360

HOUSE BILL NO. 1688
(Hughes)

LIMITATIONS ON ACTIONS

AN ACT to amend and reenact section 28-01-25 of the North Dakota Century Code, relating to disabilities extending the limitations on actions.

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

SECTION 1. AMENDMENT. Section 28-01-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-25. Disabilities extend limitations on actions generally - Exceptions. If a person who is entitled to bring an action other than for the recovery of real property, or for a penalty or forfeiture, or against a sheriff or other officer for an escape is:

1. Under the age of eighteen years;
2. Insane; or
3. Imprisoned on a criminal charge or in execution under the sentence of a criminal court for a term less than for life,

at the time the cause of action accrues, the time of such disability is not a part of the time limited for the commencement of the action. However, the period within which the action must be brought cannot be extended more than five years by any such disability except infancy, nor can it be extended in any case longer than one year after the disability ceases. In cases alleging professional malpractice, the extension of the limitation due to infancy is limited to twelve years.

Approved April 14, 1983

CHAPTER 361

HOUSE BILL NO. 1627
(Representatives DuBord, Serenus Hoffner)
(Senator Lashkowitz)

PRODUCT LIABILITY ACTION LIMITATION

AN ACT to amend and reenact section 28-01.1-02 of the North Dakota Century Code, relating to the statute of limitations for products liability actions.

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

SECTION 1. AMENDMENT. Section 28-01.1-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01.1-02. Statute of limitation.

1. There shall be no recovery of damages for personal injury, death, or damage to property caused by a defective product, except as provided in subsection 4, unless the injury, death, or damage occurred within ten years of the date of initial purchase for use or consumption, or within eleven years of the date of manufacture of a product where that action is based upon, or arises out of, any of the following:
 - a. Breach of any implied warranties.
 - b. Defects in design, inspection, testing, or manufacture.
 - c. Failure to warn.
 - d. Failure to properly instruct in the use of a product.
2. The provisions of this section shall apply to all persons, regardless of minority or other legal disability, but shall not apply to any cause of action where the personal injury, death, or damage to property occurs within two years after July 1, 1979.

3. If a manufacturer, wholesaler, or retailer issues a recall of a product in any state, modifies a product, or becomes aware of any defect in a product at any time, and fails to notify or warn a user of the product who is subsequently injured or damaged as a result of the defect, the provisions of subsection 1 shall not bar any action against the manufacturer, wholesaler, or retailer based upon, or arising out of, the defect.

4. Any action to recover damages based on injury allegedly resulting from exposure to asbestos composed of chrysotile, amosite, crocidolite, tremolite anthrophyllite, actinolite, or any combination thereof, shall be commenced within three years after the injured person has been informed of discovery of the injury by competent medical authority and that such injury was caused by exposure to asbestos as described herein, or within three years after the discovery of facts which would reasonably lead to such discovery, whichever is earlier. No action commenced under this subsection based on the doctrine of strict liability in tort shall be commenced or maintained against any seller of a product which is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless such seller is also the manufacturer of such product or the manufacturer of the part thereof claimed to be defective. Nothing in this subsection shall be construed to permit an action to be brought based on an injury described in this subsection discovered more than two years prior to the effective date of this Act.

Approved April 8, 1983

CHAPTER 362

HOUSE BILL NO. 1381
(Conmy)

VENUE IN MORTGAGE FORECLOSURE ACTIONS

AN ACT to amend and reenact section 28-04-01 of the North Dakota Century Code, relating to venue of actions for the foreclosure of mortgages upon real property where the mortgaged premises is situated in more than one county.

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

SECTION 1. AMENDMENT. Section 28-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-04-01. Venue of actions relating to real property. An action for any one of the following causes must be brought in the county in which the subject matter of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial upon agreement of counsel or in other cases provided by statute:

1. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest;
2. For injuries to real property;
3. For the partition of real property;
4. For the foreclosure of a mortgage upon real property;
5. For the taking of property by eminent domain.

Where the subject matter of the action is situated in more than one county, only one action need be brought in one of the counties and the judgment rendered in that county shall be effective as to all other counties upon its being docketed therein, and further or supplemental proceedings may be held in each county where the judgment is docketed as though the action had originally been commenced therein.

Approved March 4, 1983

CHAPTER 363

HOUSE BILL NO. 1422
(Unhjem)

REDEMPTION OF REAL ESTATE

AN ACT to amend and reenact sections 28-24-02, 28-24-03, 28-24-06, 28-24-07, and 28-24-10 of the North Dakota Century Code, relating to redemption of real estate by the judgment debtor or redemptioner during the period of redemption, protection of the purchaser, and notice of additional lien during the period of redemption.

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

SECTION 1. AMENDMENT. Section 28-24-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser within one year (six months in redemptions under subsection 1 of section 32-10.1-04) after the sale on paying the purchaser the amount of ~~his~~ the purchase with interest ~~thereon~~ at the same rate as is provided in the original instrument ~~upon~~ on which the judgment is based, ~~which rate shall not exceed the maximum rate provided in section 47-14-09, together with~~ plus the amount of any insurance premiums, assessments ~~or~~, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid ~~thereon~~ after the purchase, and interest at the same rate on ~~such~~ that amount, and, if the purchaser is also a creditor having a lien prior superior to that of the redemptioner other than the judgment under which ~~such~~ the purchase was made, the amount of ~~such~~ that lien with interest.

SECTION 2. AMENDMENT. Section 28-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-03. Redemption by redemptioner - Notice to be recorded. Whenever a redemption is made by a A redemptioner, he making redemption shall give a written notice of redemption to the sheriff and shall record a duplicate in the office of the register of deeds of the county where the land is situated. The redemptioner must state in the notice of redemption an amount that he the redemptioner

will credit on his the claim against the debtor upon on making redemption and if. If the amount so stated in the notice is less than the amount of the lien under which he the redemptioner makes redemption, a subsequent later redemptioner may redeem from him the earlier redemptioner by paying the amount paid by such that redemptioner, together with the amount of any taxes, assessments, utilities, or other items paid by such that redemptioner in protection of the title or premises, and interest on all such sums at six percent at the same rate as provided in the original instrument on which the judgment is based, together with the amount stated by such the first redemptioner as the amount he is willing to allow on the claim under which he redeemed in the notice. The amount so stated by a redemptioner as a credit on the claim under which he redeems shall in the notice must be treated as a payment of that amount on such the indebtedness, and it shall be the duty of the redemptioner shall immediately to endorse the same upon that on the evidence of his the claim, and if such. If the claim is a judgment he, the redemptioner shall cause a statement of such that amount to be entered by the clerk of court in the judgment docket. Such That credit shall be is deemed conditional only and shall must be canceled on proof of a further redemption by the debtor or by a redemptioner having a prior right, without payment of the amount credited.

SECTION 3. AMENDMENT. Section 28-24-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-06. Redemption by debtor - Recording certificate - Rights of redemption. In no case shall the The debtor may not be required to pay more to effect a redemption than the purchase price, with six percent interest from the day of sale, at the same rate as provided in the original instrument on which the judgment is based, and all taxes and other items paid pursuant to section under sections 28-24-02 and 28-24-07 with six percent interest thereon on those items from the date of payment, notwithstanding at the same rate as provided in the original instrument on which the judgment is based, despite the fact that he the debtor seeks to redeem from a redemptioner. If the debtor redeems, the effect of the sale is terminated and he the debtor is restored to his the estate. Upon On a redemption by the debtor, the person to whom the payment is made must execute and deliver to him the debtor a certificate of redemption acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such The certificate must be recorded in the office of the register of deeds of the county in which the property is situated and the register of deeds must note the that record thereof in the margin of the record of the certificate of sale. In case If the debtor redeems from a redemptioner who, to effect his redemption, has paid liens on the property other than for taxes or assessments, the redemptioner shall be is subrogated to all the rights of the former holders of such those liens, and the recording of written notice of such that redemption shall constitute is notice of the rights of such that redemptioner in and to all the liens so held by him the redemptioner

holds as equitable assignee as fully as if formal written assignments thereof had been recorded.

SECTION 4. AMENDMENT. Section 28-24-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-07. Protection of purchaser premises during period of redemption. In all cases where a sale of real estate is made under execution or upon mortgage foreclosure, the purchaser at such the sale or his the purchaser's successors in interest, in case of the expiration during the year period of redemption of any insurance policy on the premises sold, may pay the premium necessary to procure a renewal of such that policy, and, in case if any taxes or assessments become delinquent, or in case if any installment of interest or principal upon any prior or superior mortgage shall become due during such year that period of redemption, and any utilities or other items to be paid by the purchaser in protection of the title or premises, the purchaser may pay the same, and, in all such cases, the those charges. The amount so paid, with interest thereon, shall be and shall constitute a at the same rate as provided in the original instrument on which the judgment is based, is part of the sum necessary to be paid for the redemption from such the sale. Such The payments may be proved by a written notice thereof verified by the affidavit of the purchaser, his the purchaser's agent or attorney, stating the items and describing the premises, which. That notice may be recorded in the office of the register of deeds and a copy thereof of the notice served upon on the sheriff of the county, and from the date of such. After that service the sheriff, before permitting a redemption, must collect the full amount specified in such the notice in addition to the amount which would otherwise be due in redemption from such the sale, and must pay the same over that amount to the purchaser at such the sale, or his the purchaser's assignee.

SECTION 5. AMENDMENT. Section 28-24-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-10. Notice of additional lien. If any taxes or assessments, insurance premiums, utility charges, or other items are paid by the purchaser or by a redemptioner, or if he the purchaser or redemptioner has or acquires any lien other than that upon on which the sale or redemption was made, written notice thereof of that item must be given to the sheriff and a duplicate recorded in the office of the register of deeds, and if such that notice is not recorded given to the sheriff, the property may be redeemed without paying such that tax, assessment, or lien, utility, or other item.

Approved March 10, 1983

CHAPTER 364

SENATE BILL NO. 2445
(Wright)

COST BOND REQUIREMENT OF NONRESIDENT PLAINTIFF

AN ACT to repeal section 28-26-25 of the North Dakota Century Code, relating to the cost bond requirement of a nonresident plaintiff; and declaring an emergency.

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

SECTION 1. REPEAL. Section 28-26-25 of the North Dakota Century Code is hereby repealed.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 10, 1983

CHAPTER 365

SENATE BILL NO. 2122
(Committee on Judiciary)
(At the request of the Public Service Commission)

ADMINISTRATIVE AGENCY HEARING NOTICE

AN ACT to amend and reenact section 28-32-05 of the North Dakota Century Code, relating to notice requirements for administrative agency hearings.

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

SECTION 1. AMENDMENT. Section 28-32-05 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-05. Rules of procedure - Complaint - Notice of hearing - Filing and service. The following rules of procedure shall be observed by all administrative agencies in proceedings in which the same are applicable:

1. The complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of a proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.
2. Upon filing of the complaint, the appropriate administrative agency shall serve a copy of the complaint and a notice for hearing upon the respondent personally or by certified mail, as the agency may direct, at least forty-five days before the time specified for hearing. Service may be waived in writing by the respondent, or the parties may agree upon a definite time and place for hearing with the consent of the agency having jurisdiction.
3. The notice for hearing shall fix the time and place for trial upon the merits, and shall inform the respondent that an answer to the complaint must be served upon the complainant and agency giving the notice within twenty days after service of the complaint and notice for

hearing, or the complaint will be deemed admitted, and the agency will enter such order as the facts and law may warrant.

4. In an emergency the agency, in its discretion, may notice a proceeding for hearing upon the merits upon less than forty-five days' notice. Every party to such proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
5. At the hearing, the respondent shall be afforded the same opportunity to present evidence and to examine and cross-examine witnesses as is permitted under section 28-32-06.
6. Unless otherwise precluded by law, informal disposition may be made of any contested case, or any issue therein, by stipulation, agreed settlement, consent order, or default subject to agency approval.
7. If the nature of the action does not involve a complaint and specific-named respondents, the above rules shall not apply ~~and~~. Unless specific provision for notice is otherwise provided for in this code or the rules of the agency, public notice of the hearing shall be given at least fourteen days prior to the hearing by publication in the official newspaper in the county or counties in which the subject matter involved is located. All rules must provide for at least fourteen days' notice before the hearing except in cases of emergency.

Approved April 19, 1983