

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 344

HOUSE BILL NO. 1510  
(Representatives Hoffner, Shaw)  
(Senator Ingstad)

### STATUTE OF LIMITATIONS IN ASBESTOS INJURIES

AN ACT to amend and reenact section 28-01.1-02 of the North Dakota Century Code, relating to the statute of limitations for the recovery of damages for injury to property caused by products containing asbestos; and to declare an emergency.

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

\* SECTION 1. AMENDMENT. Section 28-01.1-02 of the 1983 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~~ subsections 4 and 5, 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.

\* NOTE: Section 28-01.1-02 was also amended by section 65 of Senate Bill No. 2086, chapter 82.

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 July 1, 1983.
5. Any action to recover damages based on injury to property allegedly resulting from the presence of products containing asbestos fibers of any type must be commenced within six years of the date upon which the owner of that property knew or should have known of facts giving rise to the cause of action.

**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 27, 1985

## CHAPTER 345

HOUSE BILL NO. 1150  
(Committee on Judiciary)  
(At the request of the Commission on Uniform State Laws)

### UNIFORM CONFLICT OF LAWS-LIMITATIONS ACT

AN ACT to adopt the Uniform Conflict of Laws-Limitations Act, relating to statute of limitation periods with regard to claims based on another state's law.

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

**SECTION 1. Definition of terms.** As used in this Act, unless the context otherwise requires:

1. "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.
2. "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them.

**SECTION 2. Conflict of laws - Limitation period.**

1. Except as provided by section 4, if a claim is substantively based upon:
  - a. The law of one other state, the limitation period of that state applies; or
  - b. The law of more than one state, the limitation period of one of those states chosen by the law of conflict of laws of this state, applies.
2. The limitation period of this state applies to all other claims.

**SECTION 3. Rules applicable to computation of limitation period.** If the statute of limitations of another state applies to the assertion of a claim in this state, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing

the limitation period, but its statutes and other rules of law governing conflict of laws do not apply.

**SECTION 4. Unfairness.** If the court determines that the limitation period of another state applicable under sections 2 and 3 is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this state applies.

**SECTION 5. Existing and future claims.** This Act applies to claims:

1. Accruing after June 30, 1985; or
2. Asserted in a civil action or proceeding more than one year after June 30, 1985, but it does not revive a claim barred before July 1, 1985.

Approved March 14, 1985

## CHAPTER 346

SENATE BILL NO. 2260  
(Stenehjem, Olson)

## JURY SIZE

AN ACT to amend and reenact sections 28-14-03.1 and 29-17-12 of the North Dakota Century Code, relating to the size of juries in civil and criminal cases.

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

SECTION 1. AMENDMENT. Section 28-14-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-14-03.1. Size of juries in civil cases. In all civil actions when a jury is impaneled, a jury shall consist of six qualified jurors unless any party makes a timely written demand for a jury of ~~twelve~~ nine.

SECTION 2. AMENDMENT. Section 29-17-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-17-12. Number of jurors - How sworn. In all felony and class A misdemeanor cases when a jury is impaneled, a jury shall consist of twelve ~~six~~ qualified jurors, and in unless the defendant makes a timely written demand for a jury of twelve. In all other misdemeanor cases when a jury is impaneled, a jury shall consist of six qualified jurors unless any party makes a timely written demand for a jury of twelve. Jurors shall be sworn or affirmed well and truly to try and true deliverance make between the state of North Dakota and the defendant whom they shall have in charge, and a true verdict to give according to the evidence, and such verdict must be unanimous.

Approved April 11, 1985

## CHAPTER 347

HOUSE BILL NO. 1431  
(Larson)

## EXECUTION LEVY PROCEDURES

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, providing a penalty for withholding property that has been levied upon; to amend and reenact sections 28-21-06, 28-21-07, 28-21-08, 28-21-10, 28-21-11, 28-21-18, and 28-23-10 of the North Dakota Century Code, relating to execution and sales under execution; and to repeal section 28-21-16 of the North Dakota Century Code, relating to the sheriff's jury.

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

SECTION 1. AMENDMENT. Section 28-21-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-06. Issue and contents of execution. The writ of execution must be issued in the name of the state of North Dakota, attested in the name of the judge, sealed with the seal of the court and subscribed by the clerk, and directed and delivered to the sheriff, or to the coroner when the sheriff is a party or interested. It must refer intelligibly to the judgment, stating the court, the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, and the amount actually due thereon with interest computed by the clerk issuing the execution, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

1. If it is against the property of the judgment debtor, to satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of such debtor, and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county or at any time thereafter;
2. If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, or tenants of real property or trustees, to satisfy the judgment out of such property; and

3. If it is for the delivery of the possession of real or personal property, to deliver the possession of the same, particularly describing it, to the party entitled thereto, and at the same time may require the officer to satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed or at any time thereafter, and in that respect shall be deemed an execution against property.

SECTION 2. AMENDMENT. Section 28-21-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-07. Time of return. The execution shall be returnable to the clerk with whom the record of the judgment is filed within sixty days after its receipt by the officer; except in the case when a sheriff's levy has been made within the sixty days, in which case the execution must be returnable to the clerk within a reasonable time following the completion of the sale of the property or ninety days after its receipt by the officer.

SECTION 3. AMENDMENT. Section 28-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-08. Property subject to ~~execution~~ levy - Manner of levy. All goods, chattels, moneys, and other property, both real and personal, or any interest therein, of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action are subject to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, and any interest in real or personal property, and all other property not capable of manual delivery, may be taken on execution and sold as provided in this chapter. The levy ~~of~~ under an execution shall be made ~~in the same manner as a levy under a warrant of attachment~~ as follows:

1. Upon real property, the sheriff shall file with the register of deeds of the county in which the property is located, a notice of levy that has been signed by the sheriff and that states the names of the parties to the action and a description of the property.
2. On personal property capable of manual delivery, the sheriff shall take the property into custody. When taking the property, the sheriff shall deliver a copy of the execution and notice of levy to the person from whom the property was taken.

- 3. Upon money, judgments, drafts, promissory notes, or other papers of like character, by serving a copy of the execution and levy to the person who has custody of such property except as may be provided for in chapter 32-09.1.
- 4. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy under an execution with the person holding the property or, if the property consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier, or managing agent thereof.

The sheriff may elect not to seize property during the time period the debtor has to claim exemptions under chapter 28-22 or in the case of property which by reason of its bulk or other cause cannot be removed immediately and upon service of the notice of levy in accordance with this section and section 28-21-12, the levy is as valid and effectual as if the property had been seized and the possession and control thereof retained by the officer. The lien of the writ of execution is effectual from the time the actual levy is made in accordance with this section and section 28-21-12.

SECTION 4. AMENDMENT. Section 28-21-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-10. **Officer's proceedings on execution.** When an execution is delivered to any officer, he must endorse thereon the day and hour when he received it and must proceed to execute the same with diligence. If executed, an exact description of the property sold at length with the date of the levy, sale, or other act done by virtue thereof including all costs incurred must be endorsed upon or appended to the execution, and if the writ was not executed or was, it shall be returned wholly unsatisfied with all costs incurred endorsed upon or appended to the execution. If the writ was executed in part only, the reason along with all costs in such case must be stated in the return. if no personal property is found, an endorsement to that effect must be made on the writ before levy is made on real property.

SECTION 5. AMENDMENT. Section 28-21-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-11. **Levy and sale.** The officer must execute the writ by levying on the property of the judgment debtor, ~~collecting the things in action by suit in his own name, if necessary,~~ or by selling the same, selling the other property, and paying to the plaintiff judgment creditor the proceeds, or so much thereof as will satisfy the execution.

SECTION 6. AMENDMENT. Section 28-21-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-18. Return of writ by mail. When execution shall be issued in any county and directed and delivered to the sheriff or coroner of another county, such sheriff or coroner having the execution after having discharged all the duties required of him by law shall enclose such execution by mail to the clerk who issued the same. On proof being made by such sheriff or coroner that the execution was mailed soon enough to have reached the said clerk within the time prescribed by law prior to its expiration, the sheriff or coroner shall not be liable for any amercement or penalty if it does not reach the office in due time. ~~However, no sheriff shall forward by mail any money made on any execution unless he shall be instructed specially to do so by the judgment creditor or his agent or attorney of record.~~

SECTION 7. AMENDMENT. Section 28-23-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-23-10. Sale after sixty ninety days - Abandonment of levy. In case of the failure of the sale by reason of irregularities in giving notice thereof, or of its postponement, the property may be sold upon proper notice by virtue of the execution after the expiration of the sixty ninety days allowed for the return thereof, and the officer in his return shall set forth the facts regarding such failure or postponement, or the judgment creditor, in writing filed with the clerk, may abandon such levy upon paying the costs thereof, in which case execution may issue with the same effect as if none had been issued.

SECTION 8. A new section to chapter 28-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any person who has received notice of levy in accordance with this chapter and fails to surrender and deliver such property levied on under section 28-21-08 upon demand of the sheriff is guilty of a class B misdemeanor and may be subject to civil contempt of court.

SECTION 9. REPEAL. Section 28-21-16 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1985

## CHAPTER 348

HOUSE BILL NO. 1285  
(Kretschmar)

### SHERIFF'S LEVY ON PERSONAL PROPERTY

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to levy on personal property.

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

SECTION 1. A new section to chapter 28-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Levy with certified copy of judgment.** A sheriff may levy upon a person's personal property upon receipt of a certified copy of judgment against the person, which has been docketed in any county, and proper notice has been given to the debtor requiring payment of money or the delivery of personal property. The party in whose favor the judgment was entered may proceed to enforce the judgment by execution as provided in this chapter.

Approved March 31, 1985

## CHAPTER 349

HOUSE BILL NO. 1493  
(Kretschmar)

## PROPERTY EXEMPT FROM PROCESS

AN ACT to amend and reenact sections 28-22-03 and 28-22-03.1 of the North Dakota Century Code, relating to property exempt from all process.

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

SECTION 1. AMENDMENT. Section 28-22-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03. Additional absolute exemption for head of a family. In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by his agent, may select from his other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of five thousand dollars, which also shall be exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court.

\* SECTION 2. AMENDMENT. Section 28-22-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional absolute exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided herein by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Accrued dividend, interest, or cash value of an unmatured life insurance policy not to exceed four thousand dollars.

\* NOTE: Section 28-22-03.1 was also amended by section 1 of Senate Bill No. 2435, chapter 350.

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4. The debtor's right to receive, or property that is traceable to:
- a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
  - c. A social security benefit.

Approved April 4, 1985

## CHAPTER 350

SENATE BILL NO. 2435  
(Lashkowitz, Redlin)

**BENEFITS EXEMPT FROM PROCESS**

AN ACT to amend and reenact section 28-22-03.1, subsection 3 of section 32-09.1-01, and section 32-09.1-09 of the North Dakota Century Code, relating to an exemption of social security benefits and veterans' disability pensions benefits from attachment, execution, and garnishment actions.

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

\* SECTION 1. AMENDMENT. Section 28-22-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional exemptions for residents. In addition to the exemptions provided herein, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Accrued dividend, interest, or cash value of an unmaturred life insurance policy not to exceed four thousand dollars.
4. The debtor's right to receive, or property that is traceable to:
  - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for

\* NOTE: Section 28-22-03.1 was also amended by section 2 of House Bill No. 1493, chapter 349.

actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

- c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
- d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

SECTION 2. AMENDMENT. Subsection 3 of section 32-09.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay.

SECTION 3. AMENDMENT. Section 32-09.1-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**32-09.1-09. Disclosure.** Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories which are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation, it must be verified by some officer or agent having knowledge of the facts. Disclosure must state:

1. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.
2. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts

concerning the property and the title, interest, or claim of the defendant in or to the property.

- 3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
- 4. Whether the defendant claims any exemption from execution, or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
- 5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

State of North Dakota) In ----- Court  
 ) ss.  
 County of -----) -----  
 -----  
 Plaintiff  
 vs.  
 -----  
 Defendant  
 and Garnishment Disclosure  
 -----  
 Garnishee

I am the ----- of the garnishee and duly authorized to disclose for the garnishee.

On the ----- day of -----, 19---, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

- 1. Earnings. For the purposes of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings

from both the past pay period and the current pay period.

- a. Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant's pay periods which may be subject to garnishment.

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- b. Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods which may be subject to garnishment. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks shall be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

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- c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a.

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- d. Enter on the line below 25 percent of line a.

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- e. Enter on the line below the lesser of line c and line d.

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- 2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.

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- 3. Property. Describe on the line below any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee.

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- 4. Setoff. Enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines 1(e), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a

garnishee-employer incurred by the judgment debtor within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

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5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State the names and addresses of the persons and the nature of their claim, if known. (Any assignment of wages made by the defendant within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

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6. Enter on the line below the total of lines 4 and 5.

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7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of line 1(e), 2, and 3.

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8. Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.

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9. Enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$10.00 or more.

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Signature -----  
Authorized Representative  
of Garnishee

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Title

Subscribed and sworn to before me this ----- day  
of -----, 19----.

-----  
Notary Public

Approved March 31, 1985

## CHAPTER 351

SENATE BILL NO. 2432  
(Senator Waldera)  
(Representatives Goetz, Wald)

### DEBTOR'S WAGE EXEMPTION RESTRICTION

AN ACT to create and enact a new section to chapter 28-22 of the North Dakota Century Code, relating to a restriction on the exemption of a debtor's wages.

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

SECTION 1. A new section to chapter 28-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Wages - Exemption restricted.** The wages of a debtor are exempt from all process or levy only to the extent provided in section 32-09.1-03.

Approved April 15, 1985

## CHAPTER 352

HOUSE BILL NO. 1571  
(Hedstrom, Dorso)

## FRIVOLOUS LAWSUITS — SLANDER OF TITLE

AN ACT to amend and reenact sections 28-26-31 and 47-19.1-09 of the North Dakota Century Code, relating to filing of frivolous lawsuits, awards of attorneys' fees, slander of title, and soliciting obstruction of judicial proceedings; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 28-26-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-31. Pleadings not made in good faith. Allegations and denials in any pleadings in court, made without reasonable cause and not in good faith, and found to be untrue, shall subject the party pleading them to the payment of ~~reasonable~~ all expenses, actually incurred by the other party by reason of the untrue pleading, ~~together with~~ including a reasonable attorney's fee, to be summarily taxed by the court at the trial or upon dismissal of the action.

SECTION 2. AMENDMENT. Section 47-19.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-19.1-09. Slanderous notice - Penalty. No person shall use the privilege of filing notices hereunder under this chapter or recording any instrument affecting title to real property for the purpose of slandering the title to real estate or to harass the owner of the real estate and in any action brought for the purpose of quieting title to real estate, if the court shall find that any person has filed a claim for the purpose ~~only~~ of slandering title to such real estate or to harass the owner of the real estate, the court shall award the plaintiff all the costs of such action, including attorney fees to be fixed and allowed to the plaintiff by the court, and all damages that plaintiff may have sustained as the result of such notice of claim having been filed for record or the instrument having been recorded.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 29, 1985

## CHAPTER 353

SENATE BILL NO. 2215  
(Committee on State and Federal Government)  
(At the request of the Industrial Commission)

## HOUSING FINANCE NOT ADMINISTRATIVE AGENCY

AN ACT to amend and reenact subdivision 1 of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to exempting the North Dakota housing finance agency from the provisions of the Administrative Practices Act.

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

SECTION 1. AMENDMENT. Subdivision 1 of subsection 1 of section 28-32-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, and the North Dakota mill and elevator association.

Approved March 22, 1985

## CHAPTER 354

HOUSE BILL NO. 1042  
(Legislative Council)  
(Interim Administrative Rules Committee)

## ADMINISTRATIVE CODE DISTRIBUTION

AN ACT to amend and reenact subdivision k of subsection 1 of section 28-32-03.2 of the North Dakota Century Code, relating to the distribution of the North Dakota Administrative Code.

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

SECTION 1. AMENDMENT. Subdivision k of subsection 1 of section 28-32-03.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- k. ~~North Dakota legislative~~ Legislative council, ~~two~~ four copies.

Approved March 1, 1985

## CHAPTER 355

HOUSE BILL NO. 1162  
(Committee on Industry, Business and Labor)  
(At the request of the Workmen's Compensation Bureau)

## WORKMEN'S COMPENSATION REHEARING

AN ACT to amend and reenact section 28-32-14 of the North Dakota Century Code, relating to lengthening the period for petitioning for a rehearing before the North Dakota workmen's compensation bureau.

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

SECTION 1. AMENDMENT. Section 28-32-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-14. Petition for rehearing. Any party before an administrative agency who is aggrieved by the decision thereof, within fifteen days after a copy of such decision has been mailed or delivered to such party by the administrative agency, may request a rehearing by such agency; provided, however, that any party appearing before the workmen's compensation bureau may have thirty days within which to request a rehearing. He shall submit with the request for rehearing a statement of any further showing to be made in the proceeding, and such request and statement shall constitute a part of the record in the proceeding. The administrative agency may deny such request for rehearing or may grant the same on such terms as it may prescribe. This section, however, shall not limit the right of any agency to reopen any proceeding under any continuing jurisdiction which is granted to any such agency by any law of this state.

Approved March 14, 1985

## CHAPTER 356

SENATE BILL NO. 2131  
(Committee on State and Federal Government)  
(At the request of the Public Service Commission)

## APPEAL FROM AGENCY DECISION

AN ACT to amend and reenact sections 28-32-15 and 28-32-21 of the North Dakota Century Code, relating to appeals from decisions of an administrative agency.

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

SECTION 1. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-15. Appeal from determination of agency - Time to appeal - How appeal taken. Any party to any proceeding heard by an administrative agency, except in cases where the decision of the administrative agency is declared final by any other statute, may appeal from such decision within thirty days after notice thereof has been given, or if a rehearing has been requested as provided herein and denied, within thirty days after notice of such denial has been mailed to him. Such appeal may be taken to the district court designated by law, and if none is designated, then to the district court of the county wherein the hearing or a part thereof was held. Only final orders or decisions and orders or decisions substantially affecting the rights of parties are appealable. A procedural order made by an administrative agency during the pending of a hearing before it shall not be deemed a final order nor an order affecting a substantial right. Such appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before such administrative agency, and by filing the notice of appeal and specifications of error together with proof of service thereof, and the undertaking herein required, with the clerk of the district court to which such appeal is taken. The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named respondents, except that in appeal of agency actions taken pursuant to section 28-32-02, persons participating in the rulemaking proceeding need not be named respondents. The agency and all parties of record have

the right to participate in the appeal. An undertaking must be executed by the appellant, with sufficient surety to be approved by the judge of the district court, conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against him in the district court. Such undertaking shall be made to the state of North Dakota and may be enforced by the agency concerned for and on behalf of the state as obligee.

SECTION 2. AMENDMENT. Section 28-32-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-21. Review in supreme court. The judgment of the district court in an appeal from a decision of an administrative agency may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-19, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency, the agency may not be required to pay a docket fee or file a bond for costs or equivalent security.

Approved March 22, 1985

## CHAPTER 357

SENATE BILL NO. 2403  
(Senators Lips, Todd, Wright)  
(Representatives Riley, Whalen)

## ADMINISTRATIVE HEARING ATTORNEY FEES

AN ACT to create and enact a new section to chapter 28-32 of the North Dakota Century Code, to provide for the award of attorneys' fees and costs in proceedings involving administrative agencies.

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

SECTION 1. A new section to chapter 28-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Actions against administrative agencies - Attorneys' fees and costs.**

1. In any civil judicial proceeding involving as adverse parties an administrative agency and a party not an administrative agency or agent of an administrative agency, the court must award the party not an administrative agency reasonable attorneys' fees and costs if the court finds in favor of that party and determines that the administrative agency acted without substantial justification.
2. This section applies to an administrative or judicial proceeding brought by a person against an administrative agency for judicial review of a final order or decision, or the legality of a rule adopted pursuant to this chapter.
3. Any attorneys' fees and costs awarded pursuant to this section must be paid from funds available to the administrative agency the final order, decision, or rule of which was reviewed by the court. The court may withhold all or part of the attorneys' fees from any award if the court finds the administrative agency's action was substantially justified or that special circumstances exist which make the award of all or a portion of the attorneys' fees unjust.
4. Nothing in this section shall be construed to alter the rights of a party to collect any fees under other applicable law.

Approved March 28, 1985