

JUDICIAL PROCEDURE, CIVIL

CHAPTER 383

SENATE BILL NO. 2055
(Legislative Council)
(Interim Judiciary Committee)

ACTION AGAINST STATE LIMITATIONS

AN ACT to amend and reenact section 28-01-22.1 of the North Dakota Century Code, relating to the statute of limitations for actions against the state; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 28-01-22.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-22.1. **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~~ three years after the claim for relief has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence. This may not be construed as a waiver of immunity.

SECTION 2. EFFECTIVE DATE. This Act applies to claims accruing after June 30, 1987.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 384

HOUSE BILL NO. 1082
(Dorso)

NONMANUFACTURER LIABILITY LIMITATION

AN ACT to create and enact a new section to chapter 28-01.1 of the North Dakota Century Code, relating to the liability of a nonmanufacturer; and to amend and reenact section 28-01.1-06 of the North Dakota Century Code, relating to the definition of a manufacturer.

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

SECTION 1. A new section to chapter 28-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitation on liability of nonmanufacturer.

1. In any product liability action based in whole or in part on strict liability in tort commenced or maintained against a defendant other than the manufacturer, the defendant shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.
2. After the plaintiff has filed a complaint against a manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of the claim against the certifying defendant, unless the plaintiff can show any of the following:
 - a. That the certifying defendant exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.

modifies a product in any significant manner after the product comes into his possession and before it is sold to the ultimate user or consumer. The term also includes any seller of a product who is owned in whole or significant part by the manufacturer or who owns, in whole or significant part, the manufacturer. A seller not otherwise a manufacturer shall not be deemed to be a manufacturer merely because he places or has placed a private label on a product if he-

a- Does not otherwise specify how the product shall be produced; or

b- Does not control, in some significant manner, the manufacturing process of the product;

and the seller discloses the actual manufacturer.

2. "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.
3. "Seller" means any individual or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling or leasing any product for resale, use, or consumption.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 385

SENATE BILL NO. 2302
(Olson)

EXECUTION, JUDGMENTS, AND RECORDS

AN ACT to amend and reenact subsection 6 of section 11-17-01, sections 28-20-11, 28-21-05, 28-21-06, 29-26-22, 29-26-22.1, and 29-27-02 of the North Dakota Century Code, relating to clerk of court recordkeeping requirements, issuance and contents of an execution to enforce a judgment, assessing costs of prosecution, and docketing and enforcement of a judgment for a fine or costs in a criminal case.

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

SECTION 1. AMENDMENT. Subsection 6 of section 11-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Keep in the office a register of all actions, in which the clerk shall enter the title of each action with brief notes of all papers filed and proceedings had in the action together with the date of the filing or proceeding, and such other matters as are required by supreme court rule.

SECTION 2. AMENDMENT. Section 28-20-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-11. How judgment entered - Notice when certified copy recorded entered. The judgment shall be entered in the judgment book and shall must specify clearly the relief granted or other determination of the action; but the. An entry of the judgment must be made by the clerk in the register of civil actions. The entry of any judgment affecting the title or possession of real property, except judgments required to be docketed under the provisions of section 28-20-13, shall not be notice of its contents or constructive notice of such judgment to a subsequent bona fide purchaser or encumbrancer, nor to a privy of any party to such judgment who is otherwise a subsequent purchaser or encumbrancer in good faith, and for a valuable consideration, until a certified copy

of such judgment shall be recorded in the office of the register of deeds in the county in which such property is located.

SECTION 3. AMENDMENT. Section 28-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-05. Execution against property issued to sheriff of counties where judgment docketed. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. When it requires the delivery of real or personal property, it must may be issued to the sheriff of the any county where the property or some part thereof is situated. ~~Executions~~ An execution must be issued from the court of the county which entered the judgment, though more than one execution may be issued at the same time to different counties. Real property adjudged to be sold must be sold in the county where it lies by the sheriff of such that county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. If the sheriff of the county to which the execution may be issued was a party in the action which resulted in the judgment or has an interest in any of the property against which the execution may be applied, the execution may be issued to the coroner of that county, and the coroner shall have the same power and authority to enforce the judgment by execution as provided to the sheriff in this chapter.

SECTION 4. AMENDMENT. Section 28-21-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-06. Issue Issuance 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 of the court that entered the judgment, sealed with the seal of the court and subscribed by the clerk of that court, and directed and delivered to ~~the~~ a sheriff, ~~or to the coroner when the sheriff is a party or interested as provided in section 28-21-05.~~ It must refer intelligibly to the judgment, stating the ~~court,~~ the county where the judgment ~~reli~~ or transcript is filed date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, and the names of the parties. ~~If the execution is against the property of a judgment debtor, the execution must also state the amount of money the judgment, if it is for money, and the amount actually due thereon with interest computed by the clerk issuing the execution ordered the debtor to pay to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest to be used in calculating interest due on the judgment pursuant to section 28-20-34, the amount of the costs accruing on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a county other than that of the county of the issuing writ, the date and time of docketing the judgment was docketed in the county of the sheriff to which whom the execution is being issued, and shall require the officer substantially as~~

follows. If the execution is for the delivery of the possession of real or personal property, the execution must also particularly describe the property to be delivered, specify the value of the property, identify the party entitled to possession of the property, and, if the same judgment orders the party against whom the judgment was rendered to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts of the costs, damages, or rents or profits payable as of the date of issuance of the execution. Upon receipt of an execution the sheriff shall:

1. If ~~it~~ the execution 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~~ the debtor, and, if sufficient personal property cannot be found, out of the real property belonging to ~~him~~ the debtor on the day when the judgment was docketed in the county or at any time thereafter;. If real or personal property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or
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~~ the execution is for the delivery of the possession of real or personal property, ~~to~~ deliver the possession of the same, particularly describing ~~it~~, property 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~~ the party on the day when the judgment was docketed in the county or at any time thereafter; and in that respect shall be deemed an execution against property. If delivery of the property cannot be had, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the party as if an execution against the property of the party had been issued.

* SECTION 5. AMENDMENT. Section 29-26-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22. Judgment for fines and costs - Statement to be filed by court - Docketing and enforcement. In all cases of conviction, the

* NOTE: Section 29-26-22 was also amended by section 1 of Senate Bill No. 2458, chapter 394.

costs of the prosecution may be taxed against the defendant. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. Costs shall not include any apportionment of salaries of judicial or law enforcement officers, nor shall any apportionment of maintenance costs, utility expenses, or amortization of capital expenditures be included in any assessment of costs. A judgment that the defendant pay a fine and costs, or either, must be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fees in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not paid.

SECTION 6. AMENDMENT. Section 29-26-22.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22.1. Status of judgment ~~Judgment for fines and fine or costs in criminal cases - Docketing and enforcement.~~ Judgments for fines and costs in criminal cases shall have the same status as judgments for money in civil cases and be subject to the same statutes of limitations, shall impose the same lien upon real property, when certified and filed in the district court as provided in civil cases and executions thereon shall issue in the same manner. The court may, within ten years of the date of entry of a judgment that imposes a fine or assesses costs against a defendant, order the judgment to be docketed by the clerk of court in the judgment docket maintained pursuant to section 28-20-13 in the same manner in which a civil judgment for money is docketed. The docketing of the judgment has the same effect as the docketing of a civil judgment. The docketed judgment may be docketed in any other county in the same manner, it imposes a lien upon the real property owned by the defendant to the same extent, it is subject to the same statute of limitations, and it is enforceable by execution in the same manner as provided for a civil judgment for money.

SECTION 7. AMENDMENT. Section 29-27-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-27-02. Judgment for fine and or costs. If the judgment mentioned in section 29-27-01 ~~is for~~ imposes a fine and or assesses costs, ~~or either alone,~~ and the judgment has been docketed in the judgment docket by order of the court, the judgment is enforceable by execution ~~may issue thereon~~ in the same manner as ~~en~~ provided for a judgment for money in a civil action.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 386

SENATE BILL NO. 2052
(Legislative Council)
(Interim Judicial Process Committee)

BENEFITS EXEMPT FROM PROCESS

AN ACT to exempt public retirement benefits, assistance for dependent children, and crime victims reparations awards from all liabilities for debts of the person; and to repeal sections 15-39.1-13, 18-05-11, subsection 3 of section 28-22-03.1, sections 39-03.1-23, 40-45-23, 40-46-22, 50-09-15, 54-52-12, and subsection 4 of section 65-13-15 of the North Dakota Century Code, relating to the exemption of refunds and annuities paid by the teachers' fund for retirement, payments by a firemen's relief association, unmaturred life insurance policy values, retirement, disability, or severance allowance from the highway patrolmen's retirement fund, pensions from a policemen's pension fund or city employees' pension fund, payments of aid to dependent children, benefits paid by the state retirement board, and awards of reparation for crime victims from execution of judgments.

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

SECTION 1. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state, a state agency, a political subdivision of the state, or a firemen's relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 65-13 as reparations for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

* SECTION 2. REPEAL. Sections 15-39.1-13, 18-05-11, 39-03.1-23, 40-45-23, 40-46-22, 50-09-15, 54-52-12, and subsection 4 of section 65-13-15 of the North Dakota Century Code and subsection 3 of section 28-22-03.1 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 26, 1987
Filed March 30, 1987

* NOTE: Section 28-22-03.1 was also amended by section 2 of Senate Bill No. 2053, chapter 360.

Section 54-52-12 was also amended by section 1 of House Bill No. 1146, chapter 654.

CHAPTER 387

HOUSE BILL NO. 1084
(Cleveland)

FRIVOLOUS CIVIL ACTIONS

AN ACT to amend and reenact subsection 2 of section 28-26-01 of the North Dakota Century Code, relating to the mandatory awarding of costs in frivolous civil actions.

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

SECTION 1. AMENDMENT. Subsection 2 of section 28-26-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In civil actions the court ~~may, in its discretion shall,~~ upon a finding that a claim for relief was frivolous, award reasonable actual ~~or~~ and statutory costs, ~~or both,~~ including reasonable attorney's fees to the prevailing party. Such costs ~~may~~ must be awarded regardless of the good faith of the attorney or ~~client~~ party making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in their favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim. This subsection does not require the award of costs or fees against an attorney or party advancing a claim unwarranted under existing law, if it is supported by a good faith argument for an extension, modification, or reversal of the existing law.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 388

HOUSE BILL NO. 1029
(Legislative Council)
(Interim Administrative Rules Committee)

ADMINISTRATIVE AGENCIES

AN ACT to amend and reenact subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the agencies defined as administrative agencies under the Administrative Agencies Practice Act.

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

SECTION 1. AMENDMENT. Subsection 1 of section 28-32-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
 - b. The adjutant general with respect to the division of ~~disaster~~ emergency ~~services~~ management.
 - c. The council on the arts.
 - d. The state auditor.

- e. The economic development commission.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational broadcasting council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. 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.
- m. The director of institutions.
- n. The board of pardons.
- o. The parks and recreation department.
- p. The parole board.
- q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.
- r. The state board of public school education while administering the state school construction fund.
- s. ~~The department of human services with respect to its rules under the family subsidy program.~~
- ~~t.~~ The state fair association.
- ~~w- t.~~ The state toxicologist.
- ~~w- u.~~ The board of university and school lands except with respect to activities under chapter 47-30.1.
- ~~w- v.~~ The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- ~~x- The wheat commission.~~

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 389

SENATE BILL NO. 2416
(Senators Mushik, Nalewaja, Redlin)
(Representatives Haugland, J. DeMers)

ADMINISTRATIVE RULE ADOPTION DEADLINE

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to adoption of administrative rules.

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

SECTION 1. AMENDMENT. Section 28-32-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-02. Rulemaking power of agency - Adoption deadlines - Notice - Attorney general's opinion. Every administrative agency is authorized to adopt, and from time to time to amend or repeal, reasonable rules in conformity with the provisions of any statute administered or enforced by the agency, and to prescribe methods and procedure required in connection therewith. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own. Prior to the adoption, amendment, or repeal of any rule, the agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested. The agency shall consider fully all written and oral submissions respecting the proposed rule. Every rule proposed by any administrative agency shall must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when the rule merely repeats or paraphrases the text of the statute purported to be implemented by the rule. The attorney general may not approve any rule as to legality where the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable. The attorney general may suggest any revision or rewording of a rule to meet objections as to legality.

Approved March 12, 1987

Filed March 16, 1987