

JUDICIAL REMEDIES

CHAPTER 354

HOUSE BILL NO. 1262
(Representatives Scherber, Svedjan, Payne)
(Senators Graba, Stenehjem)

FREE CLINIC VOLUNTEER IMMUNITY

AN ACT to create and enact a new section to chapter 32-03.1 of the North Dakota Century Code, relating to providing immunity to licensed health care providers who render medical care on a voluntary basis at free clinics.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Immunity for a licensed health care provider who provides volunteer medical care at free clinics. A health care provider licensed under title 43 who renders medical care on a voluntary basis at a free clinic is not liable in any personal injury civil action for acts or omissions resulting in the rendering of that care unless it is plainly alleged in the complaint and later proven that the health care provider's acts or omissions constituted intentional misconduct or gross negligence. For purposes of this section, "voluntary" is defined as without receiving remuneration of any sort. "Free clinic" is defined as a clinic that is established to provide primary health care to persons who are otherwise unable to obtain medical services due to their lack of access to health insurance or medical assistance.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 355

SENATE BILL NO. 2066
(Legislative Council)
(Interim Judiciary Committee)

ATTACHMENT PROCEDURES

AN ACT to create and enact a new section to chapter 32-08.1 of the North Dakota Century Code, relating to the prehearing attachment of property; and to amend and reenact section 32-08.1-02, subsection 1 of section 32-08.1-03, and section 32-08.1-17 of the North Dakota Century Code, relating to the issuance of writs of attachment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-08.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-08.1-02. Writ Issuance of writ - Hearing and notice requirement - Form and contents. ~~The~~ A writ of attachment ~~shall~~ may be issued on the request of the plaintiff ~~at any time~~ before final judgment and after a summons and a complaint is filed. ~~It shall~~ Except as provided in section 2 of this Act, the writ may only be issued following a hearing at which the plaintiff shall present the affidavit described in section 32-08.1-03. The court may issue the writ of attachment only if the plaintiff has provided the required affidavit, has executed a sufficient bond as required under sections 32-08.1-03 and 32-08.1-05, and has made a prima facie showing of the right to attachment. The plaintiff shall provide the defendant with a copy of the request for the writ and the accompanying affidavit and notice of the time of the hearing. The writ if issued must be directed to the sheriff of some county in which the property of the defendant is supposed to be, and ~~shall~~ must require ~~him~~ the sheriff to attach all the property of the defendant within ~~his~~ the sheriff's county or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses. ~~It shall~~ The writ must be in the name of the court and be sealed with its seal and signed by its judge.

SECTION 2. A new section to chapter 32-08.1 of the North Dakota Century Code is created and enacted as follows:

Prehearing attachment - Issuance of order - Notice of hearing. A writ of attachment may be issued on the plaintiff's request and prior to the hearing required under section 32-08.1-02 if the plaintiff's request is accompanied by an affidavit stating the basis and amount of claim against the defendant and describing facts that constitute grounds for attachment under subdivision a, b, c, or d of subsection 1 of section 32-08.1-03. The court may issue the writ prior to the hearing required under section 32-08.1-02 only if the plaintiff demonstrates the probability of success on the merits, the existence of one or more of the grounds specified in subdivision a, b, c, or d of subsection 1 of section 32-08.1-03, and that, due to extraordinary circumstances, the plaintiff's interests cannot be protected by an

appropriate order of the court, other than by directing the prehearing attachment of property. The defendant must be served immediately after the attachment is completed with a copy of the plaintiff's request for the writ, a copy of the affidavit and all other documents offered in support of the request, and a notice of the availability of a hearing under section 32-08.1-17.

SECTION 3. AMENDMENT. Subsection 1 of section 32-08.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before any writ of attachment ~~shall~~ may be executed, the plaintiff or someone on ~~his~~ the plaintiff's behalf shall make and attach thereto an affidavit stating ~~that~~ the basis and amount of the claim against the defendant is indebted to the plaintiff in a sum exceeding fifty dollars specifying the amount above all setoffs, and that the same is due upon contract or upon a judgment, and that the affiant knows or has good reason to believe any of the following:
 - a. The defendant is absent from this state, or is concealed therein so that summons cannot be served on him.
 - b. The defendant has disposed of or concealed or is about to dispose of or conceal his property or some part thereof with intent to defraud his creditors.
 - c. The defendant has removed or is about to remove property out of this state with intent to defraud his creditors.
 - d. The defendant fraudulently incurred the obligation respecting which the action is brought.
 - e. The defendant is not a resident of this state.
 - f. The defendant is a foreign corporation; or ~~if~~ is a domestic ~~that~~ corporation and no officer or agent thereof on whom to serve the summons exists or resides in this state or can be found.
 - g. The action is against a defendant as principal on an official bond to recover money due the state or to some political subdivision thereof, or that the action is against the defendant as principal upon a bond or other instrument given as evidence of debt for or to secure the payment of money embezzled or misappropriated by such defendant as an officer of the state or of a political subdivision thereof.
 - h. The action is against a defendant to recover purchase money for personal property sold to the defendant, in which case the property must be specifically described, if one of the conditions under subdivision a, e, or i and one of the conditions under subdivision b or c is also alleged.
 - i. ~~The defendant is about to remove his residence from the county where he resides with the intention of permanently changing the~~

~~same, and fails or neglects on demand to give security for the debt upon which the action is commenced.~~

- j. The action is against the owner of any motor vehicle for damages alleged to have been caused by the negligence of such owner or his duly authorized agent, the motor vehicle alleged to have been driven, occupied, or owned by a negligent driver or owner thereof, at the time of such accident, may be attached, if one of the conditions under subdivision a or e and one of the conditions under subdivision b or c is also alleged.

SECTION 4. AMENDMENT. Section 32-08.1-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-08.1-17. Answer to writ - Trial. Within ten days after notice of the issuing of a writ of attachment against ~~his~~ the defendant's property, the defendant may, by special answer, deny the existence, at the time of the making of the attachment affidavit, of the material facts stated ~~therein except the alleged liability and the amount thereof, in the affidavit~~ and may assert undue hardship as a defense. The court shall try the issue so raised shall be tried by the court, before the trial of the action and the affirmative shall be upon the plaintiff, but in no event later than fourteen days after the writ of attachment is issued. The plaintiff has the burden of proving the conditions for issuance of the prehearing writ of attachment as described in section 2 of this Act. If the defendant has made an assignment for the benefit of ~~his~~ the defendant's creditors ~~his~~ the defendant's assignee may answer and defend pursuant to this section.

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 356

HOUSE BILL NO. 1467
(Carlisle, Henegar, Hokana)

ATTACHMENT PROPERTY DISPOSITION

AN ACT to amend and reenact section 32-08.1-13 of the North Dakota Century Code, relating to care of property and collection of debts under attachment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-08.1-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-08.1-13. Care of property - Collection of debts. The officer shall ~~keep deposit with the court the property seized by him the officer and the proceeds of such as shall have been sold to answer any judgment which may be recovered in such action; and shall, subject to the direction of the court or judge, collect and receive into his possession deposit with the court all the debts, credits, and effects of the defendant. The officer may also take such legal proceedings, either in his own name or in the name of such defendant, as may be necessary for that purpose and discontinue the same at such times and on such terms as the court or judge may direct. The retention, protection, and final disposition of the property must be determined by the court.~~

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 357

SENATE BILL NO. 2444
(Senator Stenehjem)
(Representative Kretschmar)

GARNISHMENT DEBTOR DEPENDENTS

AN ACT to amend and reenact subsection 2 of section 32-09.1-03, sections 32-09.1-04, 32-09.1-07, and 32-09.1-09 of the North Dakota Century Code, relating to garnishment debtors claiming dependent family members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 32-09.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor. Within ten days after receipt of the garnishment summons, the garnishment debtor must provide to the employer a verified list of the names and social security numbers, if any, of the dependents who reside with the garnishment debtor. If the garnishment debtor fails to provide the list, it is conclusively presumed that the garnishment debtor claims no dependents.

SECTION 2. AMENDMENT. Section 32-09.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-04. Notice before garnishment of earnings. At least ten days ~~prior to before~~ the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice ~~shall~~ must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice ~~shall~~ must be in substantially the following form:

To: ----- Date: -----
Judgment Debtor

Please take notice that a garnishee summons ~~which that~~ will require part of your wages to be withheld may be served upon your employer, without any further court proceedings or notice to you, at any time after ten days following the date of this notice. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the

undersigned judgment creditor or his attorney in order to arrange for the settlement of the debt, which is \$-----

Judgment Creditor
Address

SECTION 3. AMENDMENT. Section 32-09.1-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice. The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons, a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories which that are served with the garnishee summons. The plaintiff may not require disclosure of an indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control in excess of to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff, and must state that after the expiration of the period of time specified in section 32-09.1-20, from the date of service of the garnishee summons, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability thereon on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings have been are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days prior to before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

The garnishee summons and notice to defendant shall must be substantially in the following form:

State of North Dakota) In ----- Court
) ss.
County of -----) -----

 Plaintiff
against Garnishee Summons and
----- Notice to Defendant
 Defendant
and

Garnishee

The State of North Dakota to the above-named Garnishee:

You are hereby summoned and required to serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, ----- (Give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$----- (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The amount of the judgment which remains unpaid is \$----- You are required to retain in your possession the defendant's property, money, and effects in an amount not exceeding the amount required to be disclosed by you, or so much thereof as is not exempt.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$----- (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount ~~which~~ that remains unpaid.)

You ~~shall~~ must retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 180 days from the date of service of this summons upon you. If no writ of execution has been served upon you, or no agreement has been made for payment, within 180 days, the garnishment ~~shall end ends~~ and any property or funds held by you ~~shall~~ must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant, or indebtedness to you incurred by the defendant, within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings have been subjected to garnishment.

Dated this ---- day of -----, 19----.

By: -----

NOTICE TO DEFENDANT

To:-----

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), ~~which~~ that are served upon you, were also served upon

-----, the garnishee.

(Attorneys for Plaintiff)

(Address)

(Telephone)

SECTION 4. AMENDMENT. Section 32-09.1-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted 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~~ that 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)
 County of -----) ss. In ----- Court

 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 under 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.

 - 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 must be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

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

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

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

f. Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten days after receipt of the garnishee summons).

g. Enter on the line below an amount equal to the number of dependents (line f) times twenty dollars times the number of workweeks used to compute line b.

h. Enter on the line below the difference (never less than zero) when line g is subtracted from line e.

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

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

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)~~ 1(h), 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 before receipt of the first garnishment on a debt is void and should be disregarded.)

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 each person's name and addresses of the persons address and the nature of their that person's claim, if known. (Any assignment of wages made by the

defendant within ten days prior to before the receipt of the first garnishment on a debt is void and should be disregarded.)

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

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)~~ lines 1(h), 2, and 3.

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

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.

Signature -----

Authorized Representative
of Garnishee

Title

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

Notary Public

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 358

HOUSE BILL NO. 1487
(Kelsch)

GARNISHEE SUMMONS SERVICE

AN ACT to amend and reenact section 32-09.1-08 of the North Dakota Century Code, relating to service of the garnishee summons and notice to a defendant.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-08 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-08. Service. The garnishee summons and notice to defendant shall be served upon the garnishee in the same manner as other summons in that court of record except that service must be personal. The plaintiff shall serve with the garnishee summons a disclosure form, substantially as set out in this chapter. The plaintiff may also serve interrogatories with the garnishee summons. A copy of the garnishee summons and copies of all other papers served on the garnishee must be served personally upon the defendant in accordance with the North Dakota Rules of Civil Procedure for personal service not later than ~~five~~ ten days after service is made upon the garnishee. A single garnishee summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 359

HOUSE BILL NO. 1097
(Committee on Judiciary)
(At the request of the Office of Management and Budget)

AGENCY TO WHICH CLAIM PRESENTED

AN ACT to amend and reenact section 32-12-03 of the North Dakota Century Code, relating to the refusal of a claim by the responsible department, institution, agency, board, or commission before action may be brought against the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-12-03. Claim presented and refused before action brought. No action upon a claim arising upon contract for the recovery of money only can be maintained against the state until the claim has been presented to the office of management and budget department, institution, agency, board, or commission to which claim relates for allowance and allowance thereof refused. The neglect or refusal of the office to act on such claim for a period of ten days after its presentation for allowance shall be deemed a refusal to allow the claim.

Approved March 8, 1991
Filed March 8, 1991

CHAPTER 360

HOUSE BILL NO. 1454
(Representatives Brokaw, Gerntholz, DeWitz)
(Senators Kelsh, E. Hanson, O. Hanson)

HOMESTEAD PROTECTION EXTENDED

AN ACT to amend and reenact sections 4 and 11 of chapter 394 of the 1989 Session Laws of North Dakota, relating to notice of designation of homesteads and expiration of the homestead protection provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4 of chapter 394 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 4. Designation of homesteads to be separately redeemed. The debtor may designate a reasonably compact contiguous area including the debtor's dwelling but not to exceed one hundred sixty acres [64.75 hectares] to be sold separately at the foreclosure sale by serving a copy of the legal description of the property claimed under this section on the sheriff, the register of deeds, and the parties to the foreclosure proceeding at least ~~fifteen~~ ten business days before the date of the scheduled sheriff's sale.

SECTION 2. AMENDMENT. Section 11 of chapter 394 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. This Act is effective through June 30, ~~1991~~ 1993, and after that date is ineffective.

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 361

SENATE BILL NO. 2084
(Senator Tennefos)
(Representative Dorso)

TRUSTEE IN CONTRACT FOR DEED CANCELLATION

AN ACT to amend and reenact sections 32-19.2-01, 32-19.2-02, 32-19.2-03, and 32-19.2-04 of the North Dakota Century Code, relating to appointment and duties of a trustee in an action for cancellation of a contract for deed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19.2-01. Appointment of trustee. On application of the mortgagee or contract for deed vendor, in any action for the foreclosure of a real estate mortgage or for cancellation of a contract for deed upon any commercial building, including apartments of two or more units, the court, upon ten days' notice to the mortgagor or contract for deed vendee, may, upon good cause being shown, appoint a trustee to take possession of the premises. Any person, other than the mortgagee or vendor, or its agents or employees, may act as trustee if the court deems them qualified.

SECTION 2. AMENDMENT. Section 32-19.2-02 of the North Dakota Century Code is amended and reenacted as follows:

32-19.2-02. Authority and duties of trustee. The trustee shall:

1. Take possession of the premises.
2. Pay, to the extent funds are available, all utilities, taxes, and insurance, and expenses of maintenance and operation.
3. Receive the rentals from tenants.
4. Remove tenants for nonpayment of rent or for any other cause permissible by law.
5. Rent premises.

SECTION 3. AMENDMENT. Section 32-19.2-03 of the North Dakota Century Code is amended and reenacted as follows:

32-19.2-03. Termination and accounting. The appointment of a trustee ~~shall continue~~ continues until:

1. The expiration of the period of redemption;

2. The redemption of the premises by the mortgagor or contract vendee;
3. The voluntary dismissal of the foreclosure or cancellation action; or
4. ~~His removal~~ Removal of the trustee by the court.

Within thirty days after the termination of ~~his~~ appointment, the trustee shall file with the court a report of ~~his~~ the trustee's activities and all receipts and expenditures, and shall serve a copy ~~thereof~~ on the mortgagor or the vendee by certified or registered mail, an affidavit of service by mail being competent proof thereof. The trustee's account ~~shall become~~ becomes final unless objected to within thirty days from the date of mailing to the mortgagor or contract vendee.

SECTION 4. AMENDMENT. Section 32-19.2-04 of the North Dakota Century Code is amended and reenacted as follows:

32-19.2-04. Compensation of trustee and distribution of funds. Upon the trustee's account becoming final, the trustee shall pay all remaining funds, less ~~his~~ the trustee's fee and expenses, to the mortgagor or contract vendee or to such other person as may be otherwise provided by law. The trustee ~~shall be~~ is entitled to a fee as set by the court. All expenses incurred by the trustee in performing ~~his~~ duties ~~hereunder shall~~ under this chapter must be reimbursed out of available funds.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 362

HOUSE BILL NO. 1101
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM FOREIGN-MONEY CLAIMS ACT

AN ACT to adopt the Uniform Foreign-Money Claims Act; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.
2. "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.
3. "Conversion date" means the banking day before the date on which money, in accordance with this Act, is:
 - a. Paid to a claimant in an action or distribution proceeding;
 - b. Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
 - c. Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.
4. "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.
5. "Foreign money" means money other than money of the United States.
6. "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.
7. "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

8. "Money of the claim" means the money determined as proper pursuant to section 4 of this Act.
9. "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.
10. "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.
11. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

SECTION 2. Scope. This Act applies only to a foreign-money claim in an action or distribution proceeding. This Act applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.

SECTION 3. Variation by agreement. The effect of this Act may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment. Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

SECTION 4. Determining money of the claim. The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment. If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

1. Regularly used between the parties as a matter of usage or course of dealing;
2. Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or
3. In which the loss was ultimately felt or will be incurred by the party claimant.

SECTION 5. Determining amount of the money of certain contract claims.

1. If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

2. If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.
3. A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

SECTION 6. Asserting and defending foreign-money claim.

1. A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claim is in United States dollars.
2. An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.
3. A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.
4. The determination of the proper money of the claim is a question of law.

SECTION 7. Judgments and awards on foreign-money claims - Times of money conversion - Form of judgment.

1. Except as provided in subsection 3, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.
2. A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.
3. Assessed costs must be entered in United States dollars.
4. Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.
5. A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment, or counterclaim and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the

smaller from the larger, and must specify the rates of exchange used.

6. A judgment substantially in the following form complies with subsection 1:

IT IS ADJUDGED AND ORDERED, that defendant (insert name) pay to plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

7. If a contract claim is of the type covered by section 5 of this Act, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.
8. A judgment must be docketed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. A judgment may be discharged by payment.

SECTION 8. Conversions of foreign money in distribution proceeding. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

SECTION 9. Prejudgment and judgment interest.

1. With respect to a foreign-money claim, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection 2, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.
2. The court or arbitrator shall increase or decrease the amount of prejudgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party, or its attorney causing undue delay or expense.
3. A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

SECTION 10. Enforcement of foreign judgments.

1. If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in section 7 of this Act, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.
2. A foreign judgment may be docketed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.
3. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.
4. A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

SECTION 11. Determining United States dollar value of foreign-money claims for limited purposes.

1. Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.
2. For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections 3 and 4.
3. A party seeking process, costs, bond, or other undertaking under subsection 2 shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day before the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.
4. A party seeking the process, costs, bond, or other undertaking under subsection 2 shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

SECTION 12. Effect of currency revalorization. If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in

the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money. If the substitution occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

SECTION 13. **Supplementary general principles of law.** Unless displaced by this Act, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement this Act.

SECTION 14. **TRANSITIONAL PROVISION.** This Act applies to actions and distribution proceedings commenced after the effective date of this Act.

SECTION 15. **EFFECTIVE DATE.** This Act becomes effective on January 1, 1992.

Approved March 19, 1991
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