JUDICIAL REMEDIES

CHAPTER 244

HOUSE BILL NO. 1419

(Representatives Kasper, Nathe, Gruchalla)
(Senators Klein, Oehlke, Robinson)

AN ACT to create and enact a new section to chapter 32-03 of the North Dakota Century Code, relating to immunity from civil liability for liquefied petroleum gas dealers; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Liquefied petroleum gas dealers immunity from civil liability.

1. Any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas is immune from civil liability if the direct cause of any loss, damage, or injury was caused by the alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance if the alteration, modification, or repair was done without the knowledge and consent of the liquefied petroleum gas seller, supplier, handler, or transporter or was completed by a person not certified to repair the equipment or appliance.

2. This section applies only to fixed liquefied petroleum gas fuel systems. "Fixed liquefied petroleum gas fuel system" means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] or less and includes the container assembly, pressure regulator, piping system, gas utilization equipment and components, and venting system in residential, commercial, or institutional installations.

SECTION 2. APPLICATION. This Act applies to alleged injuries, damages, or losses occurring on or after the effective date of this Act.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 245

SENATE BILL NO. 2083

(Political Subdivisions Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 32-09.1-05 of the North Dakota Century Code, relating to service of the director of the office management and budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-05. Service on office of management and budget - Fees.

Service upon the state of North Dakota, or any state institution, department, or agency, as garnishee, may be made upon the director of the office of management and budget, or the director's authorized designee, in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the office of management and budget for making and filing an affidavit of disclosure in the amount of twenty-five dollars. The fee must be deposited in the state treasury.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 246

HOUSE BILL NO. 1118

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 32-12.2-14 of the North Dakota Century Code, relating to accidents involving state motor vehicles which are reviewed by the risk management accident review board or the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.2-14 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-14. Risk management motor vehicle accident review board - Powers - Records - Meetings.

The director of the office of management and budget shall establish a risk management motor vehicle accident review board to review any accident involving a motor vehicle owned or leased by the state and operated by a state employee that results in bodily injury or significant property damage. The board is composed of the director of the department of transportation, or the director's designee, who shall serve as chairman of the board; the director of the office of management and budget, or the director's designee; the superintendent of the highway patrol or the superintendent's designee; and two state employees selected by the other board members to serve two-year terms.

The risk management motor vehicle accident review board shall review accidents involving state-owned or state-leased vehicles operated by state employees that result in bodily injury or significant property damage in order to improve traffic safety and driver training and to reduce the number of traffic accidents. The board shall adopt rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations. Three members of the board constitute a quorum and an affirmative vote of at least three board members is required for the board to take action and make a recommendation.

The duties of the chairman include scheduling meetings; notifying participants; receiving and maintaining board records, reports, and other material; and communicating with agencies concerning the board's recommendations.

The department of transportation shall report state motor vehicle-related accidents to the board for review ~~if it appears further training could have rendered the accident preventable~~involving bodily injury or significant property damage or if there was a citation issued to the state employee operating the state-owned or state-leased motor vehicle. After review, the board may recommend driver training; defensive driver training; emergency vehicle operational training; physical, written, or operational examinations; or restrictions on the use of state-owned or state-leased motor vehicles. The state agency employing the employee operating the state-owned or state-leased motor vehicle involved in the traffic accident shall decide whether to implement the board's recommendation.

State employees must be paid and may not be required to take any leave for time needed to assist the board, and all state employers shall reimburse their employees for travel expenses incurred in assisting the board.

The board must be deemed to be a state agency loss-control committee under section 32-12.2-12 and all of the board's current or former members and all participants providing any verbal or written information to the board are entitled to the rights against production of records or testimony as contained in this section.

The department of transportation shall internally review all accidents involving a motor vehicle owned or leased by the state that is not submitted to the board for review to determine whether the accident was preventable and make recommendations to the agency employing the employee involved in the accident which may include recommendations on the same issues as made by the board. The department may defer to the determinations and recommendations of an agency loss control committee approved by the board. An employee may request further review by the board of any determination or recommendation of the department.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 247

HOUSE BILL NO. 1119

(Industry, Business and Labor Committee)
(At the request of the Office of Management and Budget)

AN ACT to create and enact a new section to chapter 32-12.2 of the North Dakota Century Code, relating to providing voluntary liability coverage to student drivers driving vehicles owned or leased by the state of North Dakota as part of a course of curriculum; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

Student required driving in educational programs.

Upon request by any state institution of higher education, the office of management and budget, through the risk management fund, shall provide a defense and administer claims against students arising from the operation of a vehicle owned or leased by the state the operation of which is a required part of an established course of study. Liability shall be limited to the required amounts of financial responsibility contained in section 39-16.1-02. Nothing in this chapter makes the state responsible for the actions of the student or requires indemnification for any loss beyond the limits provided in this section, nor provides any benefits to the student except those minimum levels undertaken in a program of self-insurance filed under section 26.1-41-05.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 2011
Filed March 14, 2011

CHAPTER 248

HOUSE BILL NO. 1452

(Representatives Thoreson, Boehning, Koppelman, Schatz)
(Senator Krebsbach)

AN ACT to provide landowner immunity for injuries to trespassers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Duty of care to trespasser.

A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

SECTION 2.

Exceptions to land possessor immunity.

1. a. Notwithstanding section 1 of this Act, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:

   (1) A land possessor has a duty not to harm the trespasser in a willful and wanton manner, except as permitted under section 12.1-05-06, 12.1-05-07, 12.1-05-07.1, or 12.1-05-07.2;

   (2) A land possessor that knows of the trespasser's presence on the premises has a duty to exercise ordinary care to avoid injuring that trespasser; and

   (3) A land possessor may be subject to liability for physical injury or death to a child trespasser resulting from an artificial condition on the land if:

      (a) The possessor knew or had reason to know that children were likely to trespass at the location of the condition;

      (b) The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of death or serious bodily harm to children;

      (c) The injured child did not discover the condition or realize the risk involved in the condition or coming within the area made dangerous by it;

      (d) The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and

(e) The land possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

b. For purposes of this subsection, artificial condition means a structure or other manmade condition and does not include living animals.

2. This section does not affect chapter 53-08.

3. This section does not create or increase the liability of any person or entity.

Approved April 25, 2011
Filed April 25, 2011