

JUDICIAL REMEDIES

CHAPTER 371

HOUSE BILL NO. 1426
(Goetz, Martinson)

GOOD SAMARITAN CARE TO ATHLETES

AN ACT to limit liability for gratuitous health care provided amateur athletes.

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

SECTION 1. Limited liability for gratuitous health care provided amateur athletes. Any person licensed to provide health care services in this state who in good faith voluntarily provides a health care service without compensation or the expectation of compensation for amateur athletes, or at an amateur athletic event, is not liable for any damages resulting from any act or omission in the rendering of that care including the failure to arrange for further treatment or care. This Act may not be construed to relieve the person of liability for injury or death of the person receiving the health care service proximately resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the care.

Approved March 27, 1985

CHAPTER 372

HOUSE BILL NO. 1159
(Representative Melby)
(Senator Streibel)

WRONGFUL LIFE ACTIONS PROHIBITED

AN ACT to prohibit certain tort actions based on claims of wrongful life.

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

SECTION 1. Definition. As used in this Act "abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.

SECTION 2. Wrongful life action prohibited. No person may maintain a claim for relief or receive an award for damages on that person's own behalf based on the claim that, but for the act or omission of another, that person would have been aborted.

Approved March 29, 1985

CHAPTER 373

HOUSE BILL NO. 1427
(Representatives Whalen, Thompson, Wald)
(Senator Mutch)

ARBITRATION AGREEMENTS

AN ACT to amend and reenact section 32-04-12 of the North Dakota Century Code, relating to specific performance of agreements to arbitrate.

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

SECTION 1. AMENDMENT. Section 32-04-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-04-12. What obligations cannot be enforced specifically. The following obligations cannot be enforced specifically:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. ~~An agreement to submit a controversy to arbitration.~~
4. An agreement to perform an act ~~which~~ that the party has ~~not~~ no power lawfully to perform when required to do so.
- 5- 4. An agreement to procure the act or consent of the spouse of the contracting party or of any other third person.
- 6- 5. An agreement, the terms of which are not sufficiently certain to make the precise act ~~which~~ that is to be done clearly ascertainable.

Approved March 31, 1985

CHAPTER 374

HOUSE BILL NO. 1197
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

RECORDING BONDS TO PAY JUDGMENTS AGAINST POLITICAL SUBDIVISIONS

AN ACT to amend and reenact section 32-12.1-13 of the North Dakota Century Code, relating to the issuance of bonds to pay compromised judgments against political subdivisions.

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

SECTION 1. AMENDMENT. Section 32-12.1-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-13. ~~Negetiable bearer bonds~~ Bonds may be issued to pay compromised amount - Regulations governing. The compromised amount of a judgment agreed upon may be made payable in stated annual installments over a period not exceeding twenty-five years and at an annual rate of interest of not more than five percent. The governing body, by a resolution adopted by an affirmative vote of two-thirds of its members, may issue ~~negetiable bearer~~ bonds payable serially and maturing annually, as the parties may agree, and in the amounts of the annual installments and interest determined by the compromise, in satisfaction and discharge of the judgment. Bonds issued under this section shall be delivered to the judgment creditor upon the release of the judgment and in consideration of the full satisfaction thereof. The bonds shall be executed in the name of the political subdivision by the executive officer and the auditor or fiscal officer thereof. Except as otherwise provided in this chapter, the bonds shall be in the form prescribed for political subdivision bonds which are payable from the levy of a general tax. Prior to the delivery of the bonds to the judgment creditor, the bonds shall be registered certified and recorded by the auditor or fiscal officer in the manner provided by the laws of this state for the ~~registration~~ certification and recording of general obligation bonds of political subdivisions.

Approved March 1, 1985

CHAPTER 375

SENATE BILL NO. 2290
(Olson)

ACREAGE IN FORECLOSURE

AN ACT to amend and reenact section 32-19.1-01 of the North Dakota Century Code, relating to the number of acres of property in a real estate mortgage which is governed by the Short-Term Mortgage Redemption Act.

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

SECTION 1. AMENDMENT. Section 32-19.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-01. Mortgage may provide for foreclosure under chapter. The parties to a real estate mortgage upon property involving an area not to exceed ~~ten~~ forty acres [~~16.19~~ 64.76 hectares] may provide in said mortgage that upon default in the conditions of the mortgage the mortgage may be foreclosed as provided in this chapter.

Approved March 31, 1985

CHAPTER 376

HOUSE BILL NO. 1198
(Committee on Industry, Business and Labor)
(At the request of the Industrial Commission)

REDEMPTION UNDER THE SHORT-TERM MORTGAGE REDEMPTION ACT

AN ACT to amend and reenact sections 32-19.1-04, 32-19.1-04.1, 32-19.1-05 and 35-22-20 of the North Dakota Century Code, relating to the redemption of real property under the short-term mortgage redemption act; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 32-19.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-04. Redemption period under ~~chapter~~. All real property sold as provided in section 32-19-08 or 35-22-08 upon foreclosure of a mortgage executed pursuant to this chapter may be redeemed within the time period specified in this chapter and in such manner as is prescribed by chapter 28-24. The period for redemption under this chapter shall be as follows:

1. If the amount claimed due upon such mortgage at the date of the notice before foreclosure is more than sixty-six and two-thirds percent of the original indebtedness secured by the mortgage, the redemption period shall be six months.
2. In any other case, the redemption period shall be one year.

SECTION 2. AMENDMENT. Section 32-19.1-04.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-04.1. Redemption period to ~~commence upon filing of summons and complaint~~ Commencement of redemption period. In the event of foreclosure under this chapter, the period of redemption will commence to run at the time of the filing of the summons and complaint in the office of the clerk of the district court or at the

time of the first publication of the notice of foreclosure by advertisement, unless it is determined by the district court that the mortgagee is not entitled to judgment, and in no event will the final date for redemption be earlier than sixty days after the sheriff's sale.

SECTION 3. AMENDMENT. Section 32-19.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-05. Notice before foreclosure to state time for redemption. When the notice before foreclosure required by section 32-19-20 or 35-22-03 is served upon the title owner of record of the real estate described in the mortgage, such notice shall, where foreclosure is authorized under this chapter, contain a statement as to the time for redemption after the sheriff's sale. Failure to include such a statement in the notice shall not invalidate the notice before foreclosure, but the redemption period shall be one year.

SECTION 4. AMENDMENT. Section 35-22-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-22-20. Redemption ~~within one year~~ - Who may redeem - Notice to officer making sale. The property sold may be redeemed ~~within one year from the day of sale~~ in like manner and with the same effect as is provided for redemption of real property sold upon execution in chapter 28-24 so far as the same may be applicable by:

1. The mortgagor or his successor in interest of the whole or any part of the property.
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

Such creditor is termed a redemptioner and has all the rights of a redemptioner under that chapter, and the mortgagor or his successor in interest has all the rights of the judgment debtor and his successor in interest as provided therein. The notice of redemption required to be given to the sheriff under that chapter, in foreclosure by advertisement, may be given to the officer making the sale.

SECTION 5. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

CHAPTER 377

HOUSE BILL NO. 1383
(Martinson)

TRUSTEE IN APARTMENT FORECLOSURE

AN ACT to amend and reenact section 32-19.2-01 of the North Dakota Century Code, relating to the appointment of a trustee on application of the mortgagee in any action for the foreclosure of a real estate mortgage.

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

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

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

Approved March 27, 1985

CHAPTER 378

SENATE BILL NO. 2085
(Legislative Council)
(Interim Judiciary "B" Committee)

PERSONAL PROPERTY FORECLOSURE

AN ACT to create and enact two new sections to chapter 32-20 of the North Dakota Century Code, relating to the trial of a special answer when foreclosing on personal property; to amend and reenact sections 32-20-02 and 32-20-05 of the North Dakota Century Code, relating to the procedure used to seize the property when foreclosing on personal property and to the contents of the judgment; and to repeal section 32-20-03 of the North Dakota Century Code, relating to the form of the warrant to seize the property when foreclosing on personal property.

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

* SECTION 1. AMENDMENT. Section 32-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-20-02. Warrant to seize property - Issuance - Service. If the plaintiff is not in possession of the property, the ~~clerk~~ judge of the court in which the action is commenced, at the time of the commencement of the action or at any time before judgment, may issue a warrant commanding the sheriff to seize and safely keep the same to abide the final judgment in the action. ~~Such~~ The warrant may be issued upon the filing of a:

1. A verified complaint with the clerk setting forth a cause of action in favor of the plaintiff and against the defendant for the foreclosure of a lien upon the property possession of which is sought to be obtained. The sheriff immediately must execute the warrant by seizing the property and holding the same until disposed of according to law; and
2. An affidavit stating that the affiant knows or has good reason to believe that the seizure of the property is necessary to prevent removal, destruction, or concealment of the property or loss of the creditor's proprietary interests therein.

* NOTE: Section 32-20-02 was also amended by section 80 of Senate Bill No. 2086, chapter 82.

The sheriff shall without delay serve copies of the warrant, affidavit, and undertaking upon the defendant in the same manner as the summons. If the defendant has not filed a special answer, pursuant to this chapter, within ten days after notice of the issuance of a warrant or if in the trial of the special answer the court finds for the plaintiff, the sheriff shall seize the property of the defendant. The sheriff shall attach perishable property or property the judge has determined, when issuing a warrant, is likely to be removed, destroyed, or concealed if the property is not attached without delay, notwithstanding the right of the defendant to file a special answer.

SECTION 2. A new section to chapter 32-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special answer to warrant - Trial. Within ten days after notice of the issuing of a warrant to seize the defendant's property, the defendant may, by special answer, deny the existence, at the time of the making of the affidavit, of the material facts stated therein, and may assert undue hardship as a defense. The issue so raised must be tried by the court before the trial of the action, and the burden of proof is upon the plaintiff. If the defendant has made an assignment for the benefit of the defendant's creditors, the defendant's assignee may answer and defend pursuant to this section.

SECTION 3. A new section to chapter 32-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Trial of special answer. In making its determination of the issue raised by the special answer, the court shall consider any undue hardship on the defendant that would result from an issuance of the warrant. If the court finds for the defendant, the judge shall tax the defendant's costs of such trial, and shall enter an order dismissing the warrant or that the property attached be delivered to the defendant; and the jury or the court shall, on the trial of the action or thereafter, assess the damages sustained by the defendant by reason of the taking and detention or sale of the property attached or by reason of any injury thereto. The same, together with the costs so taxed, must be a setoff to the plaintiff's demand, and if in excess of it, or the plaintiff fails to recover, the defendant shall have judgment for the amount due. If the court on the trial of such special issue finds for the plaintiff, the judge shall tax the plaintiff's costs of such trial, and the amount so taxed must, if the plaintiff recovers, be taxed by the clerk as disbursement in the action. If the defendant or the defendant's assignee recovers judgment in the action, said costs and the judgment must be offset.

SECTION 4. AMENDMENT. Section 32-20-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-20-05. What judgment must state. In an action for the foreclosure of a lien on personal property, judgment in favor of the

plaintiff must specify the amount due on the lien and must direct a sale of the property to satisfy the same and the costs, by a person appointed thereby, or by an officer designated therein, in the manner provided for the sale of personal property under execution, and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the judgment and costs. It also may provide for the payment of the surplus to the owner of the chattel and for the safekeeping of the surplus, if necessary, until it is claimed by him. If the defendant upon whom the summons is served personally is liable for the amount of the lien, or for any part thereof, judgment may be entered against him accordingly. A judgment for either the defendant or plaintiff must specify any amounts awarded pursuant to section 3 of this Act.

* SECTION 5. REPEAL. Section 32-20-03 of the North Dakota Century Code is hereby repealed.

Approved March 22, 1985

* NOTE: Section 32-20-03 was amended by section 81 of Senate Bill No. 2086, chapter 82.

CHAPTER 379

HOUSE BILL NO. 1066
(Legislative Council)
(Interim Industry, Business and Labor Committee)

VOLUNTARY SERVICE OR PARTIAL PAYMENT OF CLAIMS

AN ACT to amend and reenact sections 32-39-01, 32-39-02, and 32-39-03 of the North Dakota Century Code, relating to voluntary service or partial payment of claims.

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

SECTION 1. AMENDMENT. Section 32-39-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-39-01. Voluntary service or partial payment not admissible. No voluntary service or partial payment of a claim, including a claim of medical malpractice, against any person based on alleged liability of that person for injury or damage arising out of any occurrence ~~shall~~ may be construed as an admission of fault or liability. Such Evidence of the service or payment shall not be is not admissible in any action as evidenece for the purpose of determining the amount of any judgment or the liability of any person with respect to ~~such the~~ occurrence.

SECTION 2. AMENDMENT. Section 32-39-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-39-02. Voluntary service or payment not admission of liability. No receipt of a voluntary service or partial payment of a claim, including a claim of medical malpractice, against any person based on alleged liability of that person for injury or damage arising out of any occurrence ~~shall~~ may be construed as a waiver or release of the claim by the person receiving such the service or payment, unless a written waiver or release is given. No receipt, provision, or payment of a voluntary service or partial payment of a claim ~~shall~~ may reduce the amount of damages which may be pleaded and proved in a court proceeding between the parties.

* SECTION 3. AMENDMENT. Section 32-39-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 32-39-03 was also amended by section 84 of Senate Bill No. 2086, chapter 82.

32-39-03. Agreement by parties - Credit for service or payment. Upon final voluntary compromise settlement of ~~the~~ any claim, including a claim of medical malpractice, against any person based on alleged liability of that person for injury or damage arising out of any occurrence, the parties may make any agreement they desire concerning previous voluntary services or partial payments of the claim. If the claim is tried in a court, after entry of judgment involving the claim, the value of any such previous voluntary service or partial payment shall be treated as a credit against the judgment and shall of the claim must be deducted from the amount of the judgment if the value thereof was included in the assessment of damages contained in the judgment. If, after entry of judgment involving the claim, it ~~shall be~~ is determined by the judgment that the amount of injury or damages is less than the value of the previous services and voluntary payments already made, the provider of the services or payer of the payments shall have has no right of action for the recovery of amounts by which the voluntary services or payments exceed such the final court judgment.

Approved March 14, 1985