

# JUDICIAL REMEDIES

## CHAPTER 258

### HOUSE BILL NO. 1057

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

AN ACT to amend and reenact subsection 2 of section 32-12.1-03 and subsection 2 of section 32-12.2-02 of the North Dakota Century Code, relating to the statutory caps for liability of political subdivisions and the state; to provide an effective date; and to provide an expiration date.

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

<sup>172</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 32-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The liability of political subdivisions under this chapter is limited to a total of ~~two~~three hundred ~~fifty~~seventy-five thousand dollars per person and one million dollars for any number of claims arising from any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages. The liability limits under this subsection must be adjusted annually as follows:
  - a. On July 1, 2023, a total of four hundred six thousand two hundred and fifty dollars per person and one million six hundred twenty-five thousand dollars for any single occurrence.
  - b. On July 1, 2024, a total of four hundred thirty-seven thousand five hundred dollars per person and one million seven hundred fifty thousand dollars for any single occurrence.
  - c. On July 1, 2025, a total of four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars per occurrence.
  - d. On July 1, 2026, a total of five hundred thousand dollars per person and two million dollars per occurrence.

**SECTION 2. AMENDMENT.** Subsection 2 of section 32-12.2-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The liability of the state under this chapter is limited to a total of ~~two~~three hundred ~~fifty~~seventy-five thousand dollars per person and one million dollars

<sup>172</sup> Section 32-12.1-03 was also amended by section 1 of Senate Bill No. 2067, chapter 259.

for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the one million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered. The liability limits under this subsection must be adjusted annually as follows:

- a. On July 1, 2023, a total of four hundred six thousand two hundred and fifty dollars per person and one million six hundred twenty-five thousand dollars for any single occurrence.
- b. On July 1, 2024, a total of four hundred thirty-seven thousand five hundred dollars per person and one million seven hundred fifty thousand dollars for any single occurrence.
- c. On July 1, 2025, a total of four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars per occurrence.
- d. On July 1, 2026, a total of five hundred thousand dollars per person and two million dollars per occurrence.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective July 1, 2022.

**SECTION 4. EXPIRATION DATE.** This Act is effective through July 31, 2027, and after that date is ineffective.

Approved March 9, 2021

Filed March 10, 2021

## CHAPTER 259

### SENATE BILL NO. 2067

(Judiciary Committee)

(At the request of the Office of Management and Budget)

AN ACT to create and enact a new subsection to section 32-12.1-03 and a new subsection to section 32-12.2-11 of the North Dakota Century Code, relating to compliance with rules of civil procedure in actions brought against political subdivisions, employees of political subdivisions, the state, or a state employee.

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

<sup>173</sup> **SECTION 1.** A new subsection to section 32-12.1-03 of the North Dakota Century Code is created and enacted as follows:

Any party to an action against a political subdivision or a political subdivision employee acting within the scope of employment as defined in this chapter shall comply with applicable rules of civil procedure when requesting documents or other information in the possession or control of the political subdivision.

**SECTION 2.** A new subsection to section 32-12.2-11 of the North Dakota Century Code is created and enacted as follows:

Any party to an action against the state or a state employee acting within the scope of employment as defined in this chapter shall comply with applicable rules of civil procedure when requesting documents or other information in the possession or control of the state.

Approved March 31, 2021

Filed April 1, 2021

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<sup>173</sup> Section 32-12.1-03 was also amended by section 1 of House Bill No. 1057, chapter 258.

## CHAPTER 260

### HOUSE BILL NO. 1316

(Representatives Mock, Bosch, Lefor, Roers Jones, Toman, Vigesaa, Weisz)  
(Senators Davison, Piepkorn, Wanzek)

AN ACT to amend and reenact section 32-12.2-15 of the North Dakota Century Code, relating to contracts limiting liability to the state; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 32-12.2-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-12.2-15. Contracts limiting liability to the state.**

1. Notwithstanding any provision in this chapter to the contrary, an agency may agree to limit the liability of a contractor to the state if the agency determines such services or products cannot be effectively obtained without such limitation and the limitation does not pose any significant risk of loss to the state and is in the best interests of the state. The agency, in consultation with the office of management and budget and the attorney general's office, shall prepare a written documentation before agreeing to any liability limitation. An agency's authority to agree to a limitation of liability is limited to contracts for the purchase or lease of, or services related to, software, communication, or electronic equipment, and economic forecasting and ~~may only limit the agency's~~.
2. An agency may limit its ability to recover indirect consequential damages.
3. If the extent of potential direct loss is unknown, an agency may agree to limit direct damages to a reasonably estimated amount commensurate with the foreseeable risk of loss to the state. The amount must be equal to twice the total value of the contract, unless all parties to the contract agree to an alternative amount. Any agreed upon amount that is less than twice the value of the contract must be approved by the director of the office of management and budget. The liquidated damages and retainage provisions for delay, missed deadlines, and other breaches are not subject to a general limitation on direct or indirect damages authorized under this section.
4. A contract under this section may not limit any direct loss to the state resulting from fraud or other intentional or willful misconduct, breach of confidentiality obligations, or loss resulting from tangible property damage or personal injury.

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

Approved March 22, 2021

Filed March 23, 2021

## CHAPTER 261

### SENATE BILL NO. 2191

(Senator Holmberg)

AN ACT to amend and reenact section 32-19-41 of the North Dakota Century Code, relating to the disposal of abandoned personal property.

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

**SECTION 1. AMENDMENT.** Section 32-19-41 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-19-41. Abandoned personal property - Disposal by record title owner.**

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1. If real property is adjudicated to be abandoned by an affidavit under section 32-19-23.1 or by a petition under section 32-19-19, the grantee in a sheriff's deed that has been recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of, without legal process, any personal property left on the real property.
2. If the real property is not adjudicated to be abandoned by an affidavit under section 32-19-23.1 or by a petition under section 32-19-19, the grantee may retain and dispose of, without legal process, any personal property left on the real property thirty days after the issuance of a sheriff's deed.
3. If the total estimated value of the personal property under subsection 2 is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing.
4. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted.
5. This section applies only to tracts of land not exceeding forty acres [16.19 hectares].
6. If the record title owner cannot be located, any remainder from the proceeds of a sale must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

Approved March 23, 2021

Filed March 24, 2021

## CHAPTER 262

### HOUSE BILL NO. 1207

(Representatives K. Koppelman, Jones, Magrum)  
(Senators Dwyer, Larson)

AN ACT to create and enact chapter 32-46.2 of the North Dakota Century Code, relating to civil actions involving asbestos; to amend and reenact subsection 2 of section 28-01.3-04 of the North Dakota Century Code, relating to liability of nonmanufacturing sellers; and to provide for application.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 28-01.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~After the plaintiff has filed a complaint against the manufacturer and the manufacturer has or is required to have answered or otherwise pleaded,~~  
~~the~~The court shall order the dismissal of the claim against the certifying seller, unless the plaintiff can show any of the following:
  - a. That the certifying seller 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.
  - b. That the certifying seller had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.
  - c. That the certifying seller created the defect in the product which caused the personal injury, death, or damage to property.

**SECTION 2.** Chapter 32-46.2 of the North Dakota Century Code is created and enacted as follows:

#### **32-46.2-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "AMA guides" means the "Guides to the Evaluation of Permanent Impairment", American medical association. (6<sup>th</sup> edition).
2. "Asbestos action" means the same as that term is defined in section 32-46.1-01.
3. "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.
4. "Board-certified in internal medicine" means a licensed physician who is certified by the American board of internal medicine or the American osteopathic board of internal medicine.

5. "Board-certified in occupational medicine" means a licensed physician who is certified in the specialty of occupational medicine by the American board of preventive medicine or the specialty of occupational/environmental medicine by the American osteopathic board of preventive medicine.
6. "Board-certified in oncology" means a licensed physician who is certified in the subspecialty of medical oncology by the American board of internal medicine or the American osteopathic board of internal medicine.
7. "Board-certified in pathology" means a licensed physician who holds primary certification in anatomic pathology or clinical pathology from the American board of pathology or the American osteopathic board of pathology and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.
8. "Board-certified in pulmonary medicine" means a licensed physician who is certified in the specialty of pulmonary medicine by the American board of internal medicine or the American osteopathic board of internal medicine.
9. "Certified B-reader" means an individual who is certified as a national institute for occupational safety and health final or B-reader of x-rays under title 42, Code of Federal Regulations, part 37.51(b).
10. "Chest x-ray" means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view.
11. "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.
12. "Exposed individual" means an individual whose exposure to asbestos is the basis for an asbestos action.
13. "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.
14. "FEV1/FVC" means the ratio between the actual values for FEV1 over FVC.
15. "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.
16. "ILO system" and "ILO scale" mean the radiological ratings and system for the classification of chest x-rays of the international labour office provided in "Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses" (2011).
17. "Nonmalignant condition" means any condition that may be caused by asbestos other than a diagnosed cancer.
18. "Official statements of the American thoracic society" means the lung function testing standards set forth in the technical standards of the American thoracic society, including "Standardization of Spirometry" (2019), "Standardisation of the Measurement of Lung Volumes" (2005), "Standards for Single-breath

Carbon Monoxide Uptake in the Lung" (2017), and "Interpretive Strategies for Lung Function Tests" (2005).

19. "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in "Asbestos-Associated Diseases", 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982).
20. "Plaintiff" means the same as that term is defined in section 32-46.1-01.
21. "Plethysmography" means the test for determining lung volume in which the exposed individual is enclosed in a chamber equipped to measure pressure, flow, or volume change.
22. "Predicted lower limit of normal" means the test value that is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height, and gender, according to the recommendations by the American thoracic society and as referenced in the AMA guides.
23. "Product liability action" means the same as defined in section 28-01.3-01.
24. "Pulmonary function test" means spirometry, lung volume testing, and diffusion capacity testing, including appropriate measurements, quality control data, and graphs, performed in accordance with the methods of calibration and techniques provided in the AMA guides and all standards provided in the official statements of the American thoracic society.
25. "Qualified physician" means a licensed physician who is board-certified in internal medicine, pathology, pulmonary medicine, occupational medicine, or oncology, as may be appropriate to the diagnostic specialty in question, and who:
  - a. Conducted a physical examination of the exposed individual and has taken a detailed occupational, exposure, medical, smoking, and social history from the exposed individual, or if the exposed individual is deceased, has reviewed the pathology material and has taken a detailed history from the individual most knowledgeable about the information forming the basis of the asbestos action;
  - b. Treated or is treating the exposed individual, and has a doctor-patient relationship with the exposed individual at the time of the physical examination, or in the case of a board-certified pathologist, examined tissue samples or pathological slides of the exposed individual at the request of the treating physician;
  - c. Has not relied on any examinations, tests, radiographs, reports, or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, radiograph, or screening of the exposed individual in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted; and

- d. Prepared or directly supervised the preparation and final review of any medical report under this chapter.
26. "Radiological evidence of asbestosis" means a quality 1 chest x-ray under the ILO system, or a quality 2 chest x-ray in a death case when no pathology or quality 1 chest x-ray is available, showing bilateral small, irregular opacities (s, t, or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/1 on the ILO scale.
27. "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 chest x-ray under the ILO system, or a quality 2 chest x-ray in a death case when no pathology or quality 1 chest x-ray is available, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.
28. "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired.
29. "Supporting test results" means B-reading and B-reader reports, reports of x-ray examinations, diagnostic imaging of the chest, pathology reports, pulmonary function tests, and all other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions.
30. "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.
31. "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.

### **32-46.2-02. Sworn information form requirement for asbestos action.**

1. In addition to any requirements for asbestos actions under chapter 32-46.1, a plaintiff in an asbestos action shall file, within forty-five days after any complaint is filed in an asbestos action, a sworn information form signed by the plaintiff and plaintiff's counsel specifying the evidence that provides the basis for each claim against each defendant. The sworn information form must include the following with specificity:
- a. The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed individual, and any person through whom the exposed person was exposed to asbestos;
- b. Each individual through whom the exposed individual was exposed to asbestos and the exposed individual's relationship to each individual;
- c. Each asbestos-containing product to which the individual was exposed and each physical location at which the exposed individual was exposed, or if the plaintiff was exposed through another individual, to which that other individual was exposed;
- d. The specific location and manner of each exposure, including for any individual through whom the exposed individual was exposed to asbestos;

- e. The beginning and ending dates of each exposure, the frequency and length of each exposure, and the proximity of the asbestos-containing product or its use to the exposed person and any person through whom the exposed person was exposed to asbestos;
  - f. The identity of the manufacturer or seller of the specific asbestos product for each exposure;
  - g. The specific asbestos-related disease claimed to exist; and
  - h. Any supporting documentation relating to the information required under this section.
2. The plaintiff has a continuing duty to supplement the information required to be disclosed in subsection 1.
  3. The court shall dismiss the asbestos action without prejudice as to any defendant whose product or premises is not identified in the required disclosures in subsection 1.
  4. The court shall dismiss the asbestos action without prejudice as to all defendants if the plaintiff and plaintiff's counsel fail to comply with this section.

### **32-46.2-03. Requirements for asbestos action.**

1. In addition to any requirements for asbestos actions under chapter 32-46.1 and the required sworn information form required by section 32-46.2-02, a plaintiff in an asbestos action shall include with any complaint a detailed narrative medical report, signed by a qualified physician and accompanied by supporting test results, which constitute prima facie evidence the exposed individual meets the requirements of this chapter. The report may not be prepared by a lawyer or other individual working for or on behalf of a lawyer or law firm.
2. A defendant shall have a reasonable opportunity to challenge the adequacy of the prima facie evidence. The court shall dismiss the action without prejudice if the plaintiff fails to comply with the requirements of this section or fails to make the prima facie showing required by this section.
3. Until a court enters an order determining the exposed individual has established prima facie evidence of impairment, an asbestos action is not subject to discovery, except discovery related to establishing or challenging the prima facie evidence.

### **32-46.2-04. Elements of proof for asbestos action involving nonmalignant conditions.**

An asbestos action related to an alleged nonmalignant asbestos-related condition may not be brought or maintained in the absence of prima facie evidence the exposed individual has a physical impairment for which asbestos exposure was a substantial contributing factor. The prima facie showing must be made as to each defendant and include a detailed narrative medical report signed by a qualified physician that includes the following:

1. Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;
2. A detailed occupational and exposure history from the exposed individual or, if the individual is deceased, from the individual most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed individual's places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts, that may cause pulmonary impairment, and the nature, duration, and level of any exposure;
3. A detailed medical, social, and smoking history from the exposed individual or, if the individual is deceased, from the individual most knowledgeable, including a thorough review of the past and present medical problems of the exposed individual;
4. Evidence verifying at least fifteen years have elapsed between the exposed individual's date of first exposure to asbestos and the date of diagnosis;
5. Evidence from an individual medical examination and pulmonary function testing of the exposed individual or, if the exposed individual is deceased, based upon the individual's medical records, the exposed individual has or the deceased individual had a permanent respiratory impairment rating of at least class 2 as defined by the AMA guides or reported significant changes year to year in lung function for FVC, FEV1, or DLCO as defined by the American thoracic society's "Interpretative Strategies for Lung Function Tests", 26 European Respiratory Journal 948-68, 961-62, table 12 (2005);
6. Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed individual's physical impairment, based on a determination the exposed individual has any of the following:
  - a. FVC below the predicted lower limit of normal and FEV1/FVC ratio (using twenty actual values) at or above the predicted lower limit of normal;
  - b. Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or
  - c. A chest x-ray showing bilateral small, irregular opacities (s, t, or u) graded by a twenty-four certified B-reader as at least 2/1 on the ILO scale; and
7. A statement that the qualified physician signing the detailed narrative medical report has concluded exposure to asbestos was a substantial contributing factor to the exposed individual's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, does not satisfy this subsection.

**32-46.2-05. Elements of proof for asbestos action involving malignant conditions.**

1. An asbestos action related to an alleged asbestos-related malignant condition may not be brought or maintained in the absence of prima facie evidence that

the exposed individual has a malignant condition for which asbestos exposure was a substantial contributing factor. The prima facie showing must be made as to each defendant and include a detailed narrative medical report signed by a qualified physician that includes all of the following:

- a. A diagnosis that the exposed person has a malignant asbestos-related condition; and
  - b. A statement that exposure to asbestos was a substantial contributing factor to the exposed individual's malignant condition and not more probably the result of other causes, and a detailed explanation for that opinion. An opinion that the malignant condition is consistent with or compatible with exposure to asbestos, or words to that effect, does not satisfy this subdivision.
2. The court shall hold an evidentiary hearing and determine if the exposed person has established a prima facie showing of cancer to which exposure to asbestos was a substantial contributing factor.

### **32-46.2-06. Evidence of physical impairment - Procedures - Limitation.**

1. Evidence relating to the prima facie showings required under this chapter does not create a presumption the exposed individual has an asbestos-related impairment and is not conclusive as to the liability of any defendant.
2. Evidence may not be offered at trial and the jury may not be informed of:
  - a. The grant or denial of a motion to dismiss an asbestos action under this chapter; or
  - b. The provisions of this chapter with respect to what constitutes a prima facie showing of asbestos impairment.
3. Evidence relating to physical impairment offered in an asbestos action governed by this chapter:
  - a. Must comply with the quality controls, equipment requirements, methods of calibration, and techniques set forth in the AMA guides and all standards set forth in the official statements of the American thoracic society;
  - b. May not be obtained under the condition the plaintiff or exposed individual retains the legal services of an attorney or law firm.
4. In the absence of consent from all parties, a court may consolidate for trial only asbestos actions relating to the exposed individual and members of that individual's household.
5. A product liability defendant in an asbestos action may not be liable for exposures from a later-added asbestos-containing product made or sold by a third party.

### **32-46.2-07. Statute of limitations.**

1. The period of limitations for an asbestos action that is not barred as of the effective date of this chapter may not accrue, nor may the running of limitations commence, before the earlier of the date:

- a. The exposed individual received a medical diagnosis of an asbestos-related impairment;
  - b. The exposed individual discovered facts that would have led a reasonable individual to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment; or
  - c. The date of death of the exposed individual having an asbestos-related impairment.
2. This section does not revive or extend limitations with respect to any claim for asbestos-related impairment that was time-barred on the effective date of this chapter.

**SECTION 3. APPLICATION.** This Act applies to all asbestos claims filed on or after August 1, 2021.

Approved April 19, 2021

Filed April 20, 2021

## CHAPTER 263

### HOUSE BILL NO. 1175

(Representatives Howe, Bosch, Devlin, Lefor, Mock, Stemen)  
(Senators Burckhard, Klein, Bell)

AN ACT to create and enact a new chapter to title 32 of the North Dakota Century Code, relating to business immunity from COVID-19 liability claims; to provide for retroactive application; and to declare an emergency.

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

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

##### **Definitions.**

As used in this chapter:

1. "COVID-19" means:
  - a. Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and any mutation or viral fragments of SARS-CoV-2; and
  - b. Any disease or condition caused by severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2.
2. "Disinfecting or cleaning supplies" includes hand sanitizers, disinfectants, disinfecting sprays, and disinfecting wipes.
3. "Health care facility" means any facility in which health care services are provided and includes a hospital, special care unit, skilled nursing facility, intermediate care facility, basic care facility, assisted living facility, ambulatory surgical center, freestanding emergency department, rural primary care hospital, critical access hospital, inpatient hospice facility, including a clinic not located on a hospital's primary campus, health maintenance organization, home health agency, any field hospital, modular field-treatment facility, or other alternative care facility designated by the state department of health for temporary use related to the COVID-19 state of emergency, and a diagnostic, examination, treatment, imaging, or rehabilitation center.
4. "Health care provider" means an individual or entity licensed, certified, or otherwise authorized to provide health care services in this state whether paid or unpaid. The term includes:
  - a. The employer or agent of a health care provider that provides or arranges a health care service;
  - b. A person engaged in telemedicine or telehealth; and

- c. A volunteer or military member who is approved by or works under the direction of the state department of health and who provides health care services in response to the COVID-19 state of emergency.
5. "Intentional" means when engaging in the conduct, it is the person's purpose to do so.
6. "Personal protective equipment" means equipment worn to prevent or minimize exposure to hazards that cause injuries or illnesses.
7. "Premises" means any real property, any appurtenant building or structure, and any vehicle serving a residential, agricultural, commercial, industrial, educational, religious, governmental, cultural, charitable, or health care purpose.
8. "Qualified product" means:
  - a. Personal protective equipment used to protect the wearer from COVID-19 or to prevent the spread of COVID-19.
  - b. A medical device or equipment used to treat COVID-19, including a medical device or equipment used or modified for an unapproved use to treat COVID-19 or to prevent the spread of COVID-19.
  - c. A medical device or equipment used outside its normal use to treat COVID-19 or to prevent the spread of COVID-19.
  - d. Medication or treatment used to treat or prevent COVID-19, including medication or treatment prescribed or dispensed for off-label use to treat or prevent COVID-19.
  - e. A test to diagnose or determine immunity to COVID-19.
9. "Reckless" means conduct engaged in a conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
10. "Unapproved" means not authorized, accredited, or certified by a federal or state agency for any other use, purpose, or design.
11. "Willful" means the conduct is engaged in intentionally, knowingly, or recklessly.

### **Actual injury requirement in civil actions alleging COVID-19 exposure.**

A person may not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless the civil action involves an act intended to cause harm or an act that constitutes actual malice.

### **Premises owner's duty of care - Limited liability.**

A person that possesses, owns, or is in control of premises, including a tenant, lessee, or occupant of a premises, which directly or indirectly invites or permits an individual onto the premises is immune from civil liability for any act or omission

resulting in damage or injury sustained from the individual's exposure to COVID-19, unless the person that possesses, owns, or is in control of the premises:

1. Exposes the individual to COVID-19 through an act that constitutes actual malice; or
2. Intentionally exposes the individual to COVID-19 with the intent to cause harm.

**Safe harbor for compliance with statutes, regulations, or executive orders.**

A person is immune from civil liability for an act or omission resulting in damage or injury sustained from exposure or potential exposure to COVID-19 if the act or omission was in substantial compliance or was consistent with a federal or state statute, regulation, or order related to COVID-19 which was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

**Liability of health care providers and health care facilities.**

1. A health care provider or health care facility is immune from civil liability for any act or omission in response to COVID-19 that causes or contributes, directly or indirectly, to the death or injury of an individual. The immunity provided under this subsection includes:
  - a. Injury or death resulting from screening, assessing, diagnosing, caring for, triaging, or treating an individual with a suspected or confirmed case of COVID-19.
  - b. Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat or prevent a suspected or confirmed case of COVID-19.
  - c. An act or omission while providing a health care service to an individual unrelated to COVID-19 if the act or omission supports the state's response to COVID-19, including:
    - (1) Delaying or canceling a nonurgent or elective dental, medical, or surgical procedure; delaying the diagnosis of an individual; or altering the treatment of an individual.
    - (2) Conducting a test or providing treatment to an individual outside the premises of a health care facility.
    - (3) An act or omission undertaken by a health care provider or a health care facility because of a lack of staff, facility, medical device, treatment, equipment, or other resource, attributable to COVID-19 which renders the health care provider or health care facility unable to provide the level or manner of care to an individual which otherwise would have been required in the absence of COVID-19.
    - (4) An act or omission undertaken by a health care provider or a health care facility relating to use or nonuse of personal protective equipment.
    - (5) An act or omission undertaken by a health care provider or a health care facility relating to the administration, delivery, distribution, allocation, prioritization, or dispensing of scarce resources among individuals such as medical devices, treatment, and equipment.

2. The immunity provided under subsection 1 does not apply to an act or omission that constitutes:
  - a. Willful and wanton misconduct;
  - b. Reckless infliction of harm; or
  - c. Intentional infliction of harm.

**Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to COVID-19.**

1. A person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 is immune from civil liability for any personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the disinfecting or cleaning supplies, personal protective equipment, or a qualified product.
2. A person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 is immune from civil liability for any personal injury, death, or property damage caused by or resulting from a failure to provide proper instruction or sufficient warning.
3. The immunity provided under subsections 1 and 2 does not apply:
  - a. To a person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product:
    - (1) With actual knowledge of a defect in the disinfecting or cleaning supplies, personal protective equipment, or a qualified product when put to the use for which the disinfecting or cleaning supplies, personal protective equipment, or a qualified product was designed, manufactured, sold, distributed, or donated; and
    - (2) If the person recklessly disregarded a substantial and unnecessary risk the disinfecting or cleaning supplies, personal protective equipment, or a qualified product would cause serious personal injury, death, or serious property damage; or
  - b. If the person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product acts with actual malice.

**Construction.**

This chapter may not be construed to:

1. Create, recognize, or ratify a liability claim or cause of action.
2. Eliminate or satisfy a required element of a liability claim or cause of action.
3. Amend, repeal, affect, or supersede any other immunity protection that may apply under state or federal law.

**Exception.**

This chapter does not apply to enforcement actions under chapters 50-24.8, 51-08.1, and 51-15.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to January 1, 2020.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 23, 2021

Filed April 23, 2021