

# JUDICIAL REMEDIES

## CHAPTER 277

### HOUSE BILL NO. 1263

(Representative Wald)

## AUTOMOBILE ACCIDENT DAMAGE LIABILITY

AN ACT to amend and reenact section 32-03.2-02.1 of the North Dakota Century Code, relating to automobile accident damage liability.

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

**SECTION 1. AMENDMENT.** Section 32-03.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**32-03.2-02.1. Automobile accident damage liability.** Notwithstanding section 32-03.2-02, in an action by any person to recover direct and indirect damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:

1. The ~~party~~ person seeking damages is seeking property damages resulting from a ~~two-party~~ motor vehicle accident in which two persons are at fault;
2. The ~~party~~ person seeking damages is seeking to recover direct physical property damages of not more than five thousand dollars and indirect physical property damages not to exceed one thousand dollars; and
3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

This section applies regardless as to whether the person seeking direct and indirect damages for injury to property also seeks damages for personal injury, however, damages for personal injury are not available under this section.

Approved April 1, 2003

Filed April 1, 2003

## CHAPTER 278

### SENATE BILL NO. 2204

(Senators Wardner, Lyson, Traynor)  
(Representatives Eckre, Kretschmar, Wrangham)

## GARNISHMENT EXPIRATION

AN ACT to amend and reenact sections 28-21-04.1, 32-09.1-07, 32-09.1-20, and 32-09.1-21 of the North Dakota Century Code, relating to the expiration of a garnishment.

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

**SECTION 1. AMENDMENT.** Section 28-21-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-04.1. Summary execution on moneys retained pursuant to garnishment.** When a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and ~~two~~ three hundred ~~seventy~~ sixty days after service of the garnishment summons. The execution may be served by the attorney for the judgment creditor or a sheriff, or an agent of either, through certified mail or personal service to the third party. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 on or before twenty days after service of the garnishment summons, no execution may be made against moneys claimed as exempt and retained pursuant to the garnishment summons until the court determines that the moneys being garnished are not exempt.

**SECTION 2. AMENDMENT.** Section 32-09.1-07 of 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 shall 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 that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control 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 shall 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, the garnishee shall release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any

employee because the employee's earnings 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 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 shall 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 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 shall serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a 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 date of entry of the judgment against the defendant was \_\_\_\_\_ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$\_\_\_\_\_.

The defendant shall provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

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 that remains unpaid.)

You shall 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 ~~270~~ 360 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 ~~270~~ 360 days, the garnishment ends and any property or funds held by you 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 are subject to garnishment.

Dated \_\_\_\_\_, \_\_\_\_.

By: \_\_\_\_\_

NOTICE TO DEFENDANT

To: \_\_\_\_\_

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

\_\_\_\_\_  
(Attorneys for Plaintiff)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

**SECTION 3. AMENDMENT.** Section 32-09.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-20. Termination of garnishment.** A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of ~~two~~ three hundred ~~seventy~~ sixty days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects that the garnishee has been retaining pursuant to the garnishment must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

**SECTION 4. AMENDMENT.** Section 32-09.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-21. Continuing lien on wages.** A plaintiff may obtain a ~~one~~ two hundred ~~eighty-day~~ seventy-day continuing lien on wages by garnishment. A plaintiff obtaining a continuing lien on wages by garnishment shall mark "continuing lien" on the caption of the garnishee summons. Each garnishment disclosure form must provide the garnishee will continue to hold the nonexempt portion of the defendant's earnings as the earnings accrue through the last payroll period ending on or before ~~one~~ two hundred ~~eighty~~ seventy days from the effective date of the garnishee

summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

If the garnishee's answers to a garnishment disclosure form provide the amount withheld is less than ten dollars, the garnishee is not required to return subsequent forms to the plaintiff until the amount withheld is ten dollars or more. For any pay period in which the garnishee is not required under this section to return the form to the plaintiff, the garnishee's answers from the previous form remain in effect. At the expected termination of the lien, the plaintiff shall mail the garnishee an additional copy of the garnishment disclosure form upon which the garnishee within ten days shall make further disclosure.

Approved March 21, 2003

Filed March 21, 2003

**CHAPTER 279****HOUSE BILL NO. 1461**  
(Representatives Niemeier, Sandvig)  
(Senator Andrist)**NAME CHANGE PUBLICATION EXCEPTIONS**

AN ACT to amend and reenact subsection 2 of section 32-28-02 of the North Dakota Century Code, relating to exceptions from the requirement to publish notice of a change of name.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 32-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The judge of the district court, upon being duly satisfied by affidavit or proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days' previous notice of the intended application has been given in the official newspaper of the county in which the petitioner resides, shall order a change of the name of the petitioner. The court may waive publication of the notice when the proposed change relates only to a first or given name as distinguished from a surname or upon evidence satisfactory to the court that the petitioner has been the victim of domestic violence as defined in section 14-07.1-01.

Approved April 21, 2003  
Filed April 21, 2003

## CHAPTER 280

### SENATE BILL NO. 2061

(Judiciary Committee)

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

## UNIFORM ARBITRATION ACT

AN ACT to adopt the Uniform Arbitration Act; and to repeal chapter 32-29.2 of the North Dakota Century Code, relating to the Uniform Arbitration Act.

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

#### SECTION 1. Definitions. As used in this Act:

1. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers in an arbitration proceeding or is involved in the appointment of an arbitrator.
2. "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
3. "Court" means the district court.
4. "Knowledge" means actual knowledge.
5. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

#### SECTION 2. Notice.

1. Except as otherwise provided in this Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.
2. A person has notice if the person has knowledge of the notice or has received notice.
3. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

#### SECTION 3. When Act applies.

1. This Act governs an agreement to arbitrate made after July 31, 2003.
2. This Act governs an agreement to arbitrate made before August 1, 2003, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

3. After July 31, 2005, this Act governs an agreement to arbitrate whenever made. Until August 1, 2005, chapter 32-29.2, as it existed on July 31, 2003, applies to agreements made after June 30, 1987.

#### **SECTION 4. Effect of agreement to arbitrate - Nonwaivable provisions.**

1. Except as otherwise provided in subsections 2 and 3, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this Act to the extent permitted by law.
2. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:
  - a. Waive or agree to vary the effect of the requirements of subsection 1 of section 5, subsection 1 of section 6, section 8, subsections 1 and 2 of section 17, section 26, or section 28 of this Act;
  - b. Agree to unreasonably restrict the right under section 9 of this Act to notice of the initiation of an arbitration proceeding;
  - c. Agree to unreasonably restrict the right under section 12 of this Act to disclosure of any facts by a neutral arbitrator; or
  - d. Waive the right under section 16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this Act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.
3. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection 1 or 3 of section 3, section 7, section 14, section 18, subsection 4 or 5 of section 20, section 22, section 23, section 24, subsection 1 or 2 of section 24, section 29, or section 30 of this Act.

#### **SECTION 5. Application for judicial relief.**

1. Except as otherwise provided in section 28 of this Act, an application for judicial relief under this Act must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.
2. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court of serving motions in pending cases.

#### **SECTION 6. Validity of agreements to arbitrate.**

1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement



is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.
3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.
4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

#### **SECTION 7. Motion to compel or stay arbitration.**

1. On motion to a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the the agreement:
  - a. If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
  - b. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
2. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.
3. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection 1 or 2, order the parties to arbitrate.
4. The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.
5. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section 27 of this Act.
6. If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.
7. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

**SECTION 8. Provisional remedies.**

1. Before an arbitrator is appointed and is authorized and able act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.
2. After an arbitrator is appointed and is authorized and able to act:
  - a. The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and
  - b. A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.
3. A party does not waive a right of arbitration by making a motion under subsection 1 or 2.

**SECTION 9. Initiation of arbitration.**

1. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.
2. Unless a person objects for lack or insufficiency of notice under subsection 3 of section 15 of this Act not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

**SECTION 10. Consolidation of separate arbitration proceedings.**

1. Except as otherwise provided in subsection 3, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:
  - a. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
  - b. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

- c. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
  - d. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.
2. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.
3. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

#### **SECTION 11. Appointment of arbitrator - Service as a neutral arbitrator.**

1. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.
2. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

#### **SECTION 12. Disclosure by arbitrator.**

1. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:
  - a. A financial or personal interest in the outcome of the arbitration proceeding; and
  - b. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.
2. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.
3. If an arbitrator discloses a fact required by subsection 1 or 2 to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection

may be a ground under subdivision b of subsection 1 of section 23 of this Act for vacating an award made by the arbitrator.

4. If the arbitrator did not disclose a fact as required by subsection 1 or 2, upon timely objection by a party, the court under subdivision b subsection 1 of section 23 of this Act may vacate an award.
5. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under subdivision b of subsection 1 of section 23 of this Act.
6. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under subdivision b of subsection 1 of section 23 of this Act.

**SECTION 13. Action by majority.** If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them must conduct the hearing under subsection 3 of section 15 of this Act.

**SECTION 14. Immunity or arbitrator - Competency to testify - Attorney's fees and costs.**

1. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.
2. The immunity afforded by this section supplements any immunity under other law.
3. The failure of an arbitrator to make a disclosure required by section 12 of this Act does not cause any loss of immunity under this section.
4. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:
  - a. To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or
  - b. To a hearing on a motion to vacate an award under subdivision a or b of subsection 1 of section 23 of this Act if the movant establishes prima facie that a ground for vacating the award exists.
5. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of

subsection 4, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

### **SECTION 15. Arbitration process.**

1. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.
2. An arbitrator may decide a request for summary disposition of a claim or particular issue:
  - a. If all interested parties agree; or
  - b. Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.
3. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.
4. At a hearing under subsection 3, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.
5. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 11 of this Act to continue the proceeding and to resolve the controversy.

**SECTION 16. Representation by lawyer.** A party to an arbitration proceeding may be represented by a lawyer.

**SECTION 17. Witnesses - Subpoenas - Depositions - Discovery.**

1. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.
2. In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.
3. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.
4. If an arbitrator permits discovery under subsection 3, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.
5. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.
6. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.
7. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

**SECTION 18. Judicial enforcement of preaward ruling by arbitrator.** If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under

section 19 of this Act. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 22 of this Act, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modified, or corrects the award under section 23 or 24 of this Act.

#### **SECTION 19. Award.**

1. An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.
2. An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

#### **SECTION 20. Change of award by arbitrator.**

1. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:
  - a. Upon a ground stated in subdivision a or c of subsection 1 of section 24 of this Act;
  - b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding;  
or
  - c. To clarify the award.
2. A motion under subsection 1 must be made and notice given to all parties within twenty days after the movant receives notice of the award.
3. A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.
4. If a motion to the court is pending under section 22, 23, or 24 of this Act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:
  - a. Upon a ground stated in subdivision a or c of subsection 1 of section 24 of this Act;
  - b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding;  
or
  - c. To clarify the award.

5. An award modified or corrected pursuant to this section is subject to subdivision 1 of section 19 of this Act and sections 22, 23, and 24 of this Act.

**SECTION 21. Remedies - Fees and expenses of arbitration proceedings.**

1. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.
2. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.
3. As to all remedies other than those authorized by subsections 1 and 2, an arbitration may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 22 of this Act or for vacating an award under section 23 of this Act.
4. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.
5. If an arbitrator awards punitive damages or other exemplary relief under subsection 1, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

**SECTION 22. Confirmation of award.** After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24 of this Act or is vacated pursuant to section 23 of this Act.

**SECTION 23. Vacating award.**

1. Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:
  - a. The award was procured by corruption, fraud, or other undue means;
  - b. There was:
    - (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;
    - (2) Corruption by an arbitrator; or
    - (3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;



- c. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this Act, so as to prejudice substantially the rights of a party to the arbitration proceeding;
  - d. An arbitrator exceeded the arbitrator's powers;
  - e. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection 3 of section 15 of this Act not later than the beginning of the arbitration hearing; or
  - f. The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this Act so as to prejudice substantially the rights of a party to the arbitration proceeding.
2. A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to section 19 of this Act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this Act, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.
  3. If the court vacates an award on a ground other than that set forth in subdivision e of subsection 1, it may order a rehearing. If the award is vacated on a ground stated in subdivision a or b of subsection 1, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision c, d, or f of subsection 1, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subdivision 2 of section 19 of this Act for an award.
  4. If the court denies a motion to vacate an award, the court shall confirm the award unless a motion to modify or correct the award is pending.

#### **SECTION 24. Modification or correction of award.**

1. Upon motion made within ninety days after the movant receives notice of the award pursuant to section 19 of this Act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this Act, the court shall modify or correct the award if:
  - a. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
  - b. The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

- c. The award is imperfect in a matter of form not affecting the merits of the decision on the claim submitted.
2. If a motion made under subsection 1 is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.
3. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

**SECTION 25. Judgment on award - Attorney's fees and litigation expenses.**

1. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.
2. A court may allow reasonable costs of the motion and subsequent judicial proceedings.
3. On application of a prevailing party to a contested judicial proceeding under section 22, 23, or 24 of this Act, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

**SECTION 26. Jurisdiction.**

1. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.
2. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this Act.

**SECTION 27. Venue.** A motion pursuant to section 5 of this Act must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

**SECTION 28. Appeals.**

1. An appeal may be taken from:
  - a. An order denying a motion to compel arbitration;
  - b. An order granting a motion to stay arbitration;
  - c. An order confirming or denying confirmation of an award;

- d. An order modifying or correcting an award;
  - e. An order vacating an award without directing a rehearing; or
  - f. A final judgment entered pursuant to this Act.
2. An appeal under this section must be taken as from an order or a judgment in a civil action.
  3. Agreements to arbitrate between and among insurers and self-insured entities which explicitly renounce a right of appeal are fully enforceable in this state. This chapter does not alter those agreements to create a right of appeal.

**SECTION 29. Relationship to Electronic Signatures in Global and National Commerce Act.** The provisions of sections 1 and 19 of this Act which relate to the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures must be construed to conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 15 U.S.C. 7001, 7002].

**SECTION 30. REPEAL.** Chapter 32-29.2 of the North Dakota Century Code is repealed.

Approved April 8, 2003  
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