

JUDICIAL PROCEDURE, CIVIL

CHAPTER 275

SENATE BILL NO. 2221

(Senator Holmberg)

BANKRUPTCY PROCEEDINGS

AN ACT to create and enact a new section to chapter 28-20 of the North Dakota Century Code, relating to the effect of bankruptcy on a judgment lien; to amend and reenact section 47-18-18 of the North Dakota Century Code, relating to declaration of a homestead; and to repeal sections 28-20-30, 28-20-31, and 28-20-32 of the North Dakota Century Code, relating to cancellation of judgment against bankrupts, service in bankruptcy proceedings, and affidavits in bankruptcy proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-20 of the North Dakota Century Code is created and enacted as follows:

Effect of bankruptcy on judgment lien.

1. If a judgment lien appears on a judgment debtor's real property and the debtor is later the subject of bankruptcy proceedings in which the judgment lien is avoided or set aside, the judgment lien may be terminated of record by filing a certified copy of the bankruptcy court lien avoidance judgment.
2. A prebankruptcy petition judgment does not create a lien on real property that is acquired by the judgment debtor after the filing of the bankruptcy petition which may be established by filing a copy of the discharge.
3. A copy of the discharge may be filed to remove a judgment lien as a cloud on the homestead set aside to the bankruptcy debtor.
4. Subsection 2 does not apply if the judgment creditor files a certified copy of an order or a judgment of the bankruptcy court which declares the debt is nondischargeable. A judgment creditor may record lis pendens stating the judgment creditor has filed a nondischargeability action in bankruptcy court. This section does not apply to debts automatically excepted from discharge under section 523 of the United State Bankruptcy Code [11 U.S.C. 523].
5. As used in this section, "files" or "filing" means a filing with the clerk of district court in the county in which the judgment is docketed or transcribed.

SECTION 2. AMENDMENT. Section 47-18-18 of the North Dakota Century Code is amended and reenacted as follows:

47-18-18. Declaration of homestead - How executed and acknowledged.

In order to select a homestead the claimant ~~must~~ shall execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the declaration for record.

~~A finding claim of a homestead exemption by the bankruptcy court on behalf of a person discharged from debts pursuant to the Act of the Congress of the United States known as "an act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898", as amended [ch. 544, 30 Stat. 544], shall be a debtor who received a discharge is a declaration of homestead.~~

~~Filing for record in the recorder's office of the county where the homestead is located a certified copy with the legal description of the bankrupt's discharge of bankruptcy constitutes notice that the property has been found to be is a homestead and exempt from these judgments determined by the bankruptcy court to be discharged.~~

SECTION 3. REPEAL. Sections 28-20-30, 28-20-31, and 28-20-32 of the North Dakota Century Code are repealed.

Approved April 30, 2007

Filed May 1, 2007

CHAPTER 276**SENATE BILL NO. 2170**

(Senators Lyson, Triplett)

(Representatives Klemin, Kretschmar)

PAYMENT TO SHERIFF UPON LEVY

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to the amount payable to the sheriff by a depository institution or credit union under a notice of levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-21 of the North Dakota Century Code is created and enacted as follows:

Amount payable to sheriff by depository institution or credit union. The amount payable to a sheriff by a depository institution or credit union that has been served with a notice of levy is limited to the lesser of the amount necessary to satisfy the execution or the deposit account balance of the debtor as shown by the deposit institution's or credit union's records at the time the notice of levy is served.

Approved March 2, 2007

Filed March 2, 2007

CHAPTER 277**SENATE BILL NO. 2284**

(Senators Hacker, Triplett)
(Representatives Delmore, Glassheim, Koppelman)

**PERSONAL INJURY RECOVERY PROCESS
EXEMPTION**

AN ACT to amend and reenact subsection 4 of section 28-22-03.1 of the North Dakota Century Code, relating to exemption from process for proceeds of a wrongful death or personal bodily injury recovery; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The debtor's right to receive, or property that is traceable to:
 - a. A payment, not to exceed ~~seven~~ fifteen thousand ~~five~~ hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, ~~to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.~~
 - b. A payment, not to exceed ~~seven~~ fifteen thousand ~~five~~ hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
 - c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
 - d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

SECTION 2. LEGISLATIVE COUNCIL STUDY - EXEMPTIONS FROM PROCESS. The legislative council shall consider studying during the 2007-08 interim the exemption provisions found in North Dakota Century Code chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 26, 2007
Filed April 27, 2007

CHAPTER 278

SENATE BILL NO. 2277 (Senator Holmberg)

SALES UNDER EXECUTION

AN ACT to amend and reenact sections 28-23-01, 28-23-02, 28-23-04, 28-23-05, 28-23-06, 28-23-07, 28-23-09, 28-23-11, 28-23-12, 28-23-13, and 28-23-14 of the North Dakota Century Code, relating to sales under execution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-01 of the North Dakota Century Code is amended and reenacted as follows:

28-23-01. Sale of personal property - Notice of sale. The officer who levies upon personal property, other than crops or perishable property; ~~by virtue of an execution, before the officer proceeds to sell the same,~~ shall ~~cause give~~ public notice ~~to be given~~ of the time and place of ~~such~~ the sale by advertisement published once each week for two successive weeks next before the day of sale; ~~in some the county's official newspaper printed in the county, such newspaper to be designated by the judgment creditor or the judgment creditor's attorney, or, in case no newspaper is published therein, by posting advertisements in five public places in the county.~~

SECTION 2. AMENDMENT. Section 28-23-02 of the North Dakota Century Code is amended and reenacted as follows:

28-23-02. Sale of crops. If the levy is upon ~~crops, when harvested, such~~ crops, at the option of the judgment creditor, ~~the crops~~ may be sold in the nearest usual market ~~therefor for crops,~~ at any time; after such levy, ~~in the usual manner,~~ at the market price ~~thereof in such market and~~ without publishing ~~or posting~~ notice of sale. In that case, ~~however,~~ the notice of levy; or a subsequent notice to be served as the notice of levy is served; must state where and when ~~such the~~ crops will be sold. Should the judgment debtor, or the judgment debtor's agent or attorney, at the time ~~such the~~ levy is made, give notice to the officer making the levy that the judgment debtor intends to settle the judgment, the officer shall hold the grain six days before making sale ~~thereof of the grain.~~ The usual and reasonable charges for the sale and transportation of ~~such the~~ grain to market must be deemed proper expenses chargeable as costs in ~~such the~~ proceedings, and in case the notice above provided for is served on the officer there also must be chargeable reasonable charges for storing ~~said the~~ grain.

SECTION 3. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is amended and reenacted as follows:

28-23-04. Sale of real property - Notice of sale - Contents.

1. Before any real property or interest ~~therein in real property~~ taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:

1. ~~If a newspaper is printed in the county where the real property to be sold is situated, the notice must be given by advertisement in a the county's official newspaper printed in the county once a week for three successive weeks, the last publication to be at least ten days prior to before the making of the sale; and,~~
2. ~~In case no newspaper is printed in the county, then the officer making the sale shall cause the advertisement to be made by posting a copy of the advertisement on the outer door of the courthouse or building where the district court of the county was last held, and in five other public places in the county.~~

Except for parties who have an ownership interest in the real property ~~subject to foreclosure of a mortgage under chapter 32-19~~, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days ~~prior to~~ before the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

SECTION 4. AMENDMENT. Section 28-23-05 of the North Dakota Century Code is amended and reenacted as follows:

28-23-05. Where sale of real property made. All sales of real property, or any interest ~~therein, in real property~~ under execution, must be held ~~at the courthouse, if there is one in the county in which such the real property is situated, and if there is no courthouse, then at the door of the house in which the district court was last held, and if there is no courthouse and no district court has been held in the county, then or at such a place within the county as the sheriff shall designate designates in the sheriff's notice of sale, or the place designated in the published notice of sale if the foreclosure is by advertisement.~~

SECTION 5. AMENDMENT. Section 28-23-06 of the North Dakota Century Code is amended and reenacted as follows:

28-23-06. Place of sale of personal property. If the owner of the personal property levied on, other than crops, agrees to keep ~~such the~~ property safely until the day of sale and requests that the sale be held on the premises where the property is seized, the sale must be held on the premises where the property is seized. Otherwise the sale may be had at the place designated by the sheriff in the notice of sale. ~~This provision also applies in case of foreclosure by advertisement.~~

SECTION 6. AMENDMENT. Section 28-23-07 of the North Dakota Century Code is amended and reenacted as follows:

28-23-07. Time and manner of sale. All sales of property under execution must be made at public auction to the highest bidder, between the hours of nine a.m. and four p.m. After sufficient property has been sold to satisfy the execution, no more property may be sold. ~~No A sheriff or other officer, nor a or the sheriff's or officer's deputy, holding the execution or making the sale of property, either personal or real, may not become a purchaser or be interested directly or indirectly in any purchase at such the sale, and every. A purchase so made must be considered fraudulent and void. When If the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in ~~such~~ parcels as are likely to bring the highest price, and when the sale is of real property~~

consisting of several known lots or parcels they must be sold separately unless they constitute one parcel on which improvements have been constructed. The judgment debtor, if present at the sale, may direct the order in which property; ~~real or personal~~, must be sold; ~~when such~~ if the property consists of several known lots or parcels or of articles which can be sold to advantage separately; and the. The sheriff or other officer shall follow ~~such~~ these directions.

SECTION 7. AMENDMENT. Section 28-23-09 of the North Dakota Century Code is amended and reenacted as follows:

28-23-09. Surplus paid judgment debtor. ~~When~~ Except for real estate foreclosure sales if the property sells for more than the amount required to be collected, the surplus must be paid to the judgment debtor, unless the officer has another execution in the officer's hands on which the surplus rightfully may be applied.

SECTION 8. AMENDMENT. Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

28-23-11. Purchaser's right - Sheriff's certificate.

1. Upon a sale of real property, the purchaser is substituted for the judgment debtor and acquires all the right, title, interest, and claim of ~~such the~~ debtor to ~~such the~~ property; ~~and when~~. If the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the real property is subject to redemption as provided in this title. The officer shall give to the purchaser a certificate of sale containing:
 - 1- ~~A particular~~ a description of the real property sold;
 - 2- A statement of the price bid for each distinct lot or parcel;
 - 3- A statement of the whole price paid; ~~and~~
 - 4- ~~When subject to the period of redemption; a statement to that effect; and the name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.~~
2. ~~Such certificate must be executed by the~~ The officer shall execute the certificate and ~~acknowledged~~ acknowledge or ~~proved~~ prove the certificate as ~~may be required by law~~ for deeds of real property.

SECTION 9. AMENDMENT. Section 28-23-12 of the North Dakota Century Code is amended and reenacted as follows:

28-23-12. Recording of sheriff's certificate required - Evidence. The sheriff's certificate of sale must be recorded in the office of the recorder of the county ~~wherein in which~~ the real property is situated; within sixty ten days from the date of sale. ~~Such~~ The sheriff's certificate or a certified copy thereof of the certificate certified by ~~such the~~ recorder must be taken and deemed evidence of the facts therein recited and contained in the certificate.

SECTION 10. AMENDMENT. Section 28-23-13 of the North Dakota Century Code is amended and reenacted as follows:

28-23-13. Proceedings upon confirmation. If the court, upon the return of any execution for the satisfaction of which any real property or interest ~~therein~~ in real property has been sold, after having carefully examined the proceedings of the officer, is satisfied that the sale has been made in all respects in conformity to the provisions of this chapter, the court shall make an order confirming the sale and directing the clerk to make an entry on the journal that the court is satisfied of the legality of ~~such~~ the sale, and an order that the officer make to the purchaser a deed of ~~such~~ the real property, or interest ~~therein~~, in the real property at the expiration of ~~one year from the day of sale~~ the redemption period unless the ~~same~~ property is redeemed. The officer ~~after making such sale~~ may retain the purchase money ~~in the officer's hands~~ until the court ~~has examined the officer's proceedings as aforesaid~~ confirms the sale, ~~when then~~ the officer shall pay the ~~same~~ money to the person entitled ~~thereto~~ to the money by order of the court.

SECTION 11. AMENDMENT. Section 28-23-14 of the North Dakota Century Code is amended and reenacted as follows:

28-23-14. Reversal does not defeat sale. If any judgment, in satisfaction of which any real property is sold, is reversed ~~at any time thereafter~~, ~~such the~~ reversal does not defeat nor affect the title of the purchaser, but ~~in such case~~, restitution must be made by the judgment creditor of the money ~~for which such real property was sold~~ received from the sale, with legal interest ~~thereon~~ on the money from the day of sale.

Approved April 13, 2007

Filed April 16, 2007

CHAPTER 279

SENATE BILL NO. 2222 (Senator Holmberg)

PROPERTY REDEMPTION

AN ACT to amend and reenact sections 28-24-01, 28-24-02, 28-24-03, 28-24-04, 28-24-05, 28-24-06, 28-24-07, 28-24-10, 28-24-13, and 28-24-14 of the North Dakota Century Code, relating to redemption of property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-24-01 of the North Dakota Century Code is amended and reenacted as follows:

28-24-01. Who may redeem - Redemptioner. ~~Property~~ A property sold subject to redemption, ~~or any part sold separately,~~ may be redeemed in the manner ~~hereinafter~~ as provided; in this chapter by the following ~~persons~~ person or their successors in interest:

1. The judgment debtor, ~~or the judgment debtor's successors in interest;~~ and or
2. A creditor having a lien ~~by judgment, mortgage, or otherwise~~ on the property ~~sold, or on some share or part thereof of the property,~~ subsequent to that on which the property was sold, and is designated in this chapter as a redemptioner.

The persons described in subsection 2 are in this chapter termed redemptioners.

SECTION 2. AMENDMENT. Section 28-24-02 of the North Dakota Century Code is amended and reenacted as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser by during the redemption period by paying the purchaser amount of the purchase bid and any additional lien claimed under section 28-24-07 with interest at the rate provided in the original instrument on which the judgment is based; plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if. If the purchaser is also a creditor having a lien superior to that of the redemptioner ~~other than the judgment under which the purchase was made,~~ the amount of that prior lien with interest must be paid to effect a redemption. The period of redemption is six months for a redemption under subsection 4 of section 32-19-1-04 and for all other redemptions the period of redemption is one year. The period of redemption begins at the time of the filing of the summons and complaint in the office of the clerk of district court or at the time of the first publication of the notice before foreclosure by advertisement, unless it is determined by the court that the mortgagee is not entitled to judgment. The final date for redemption may not be earlier than sixty days after the sheriff's sale. Except as provided in section 32-19-18 for redemption from foreclosure sales, the redemption period is one year from the date of the sheriff's sale.

SECTION 3. AMENDMENT. Section 28-24-03 of the North Dakota Century Code is amended and reenacted as follows:

28-24-03. Redemption by redemptioner - Notice to be recorded. A redemptioner making redemption shall give a written notice of redemption to the sheriff and at the same time shall record a duplicate in the office of the county recorder of the county where the land is situated. The redemptioner shall must state in the notice of redemption an amount that the redemptioner will credit on the claim ~~against the debtor~~ on making redemption. If the amount stated in the notice is less than the amount of the lien under which the redemptioner makes redemption, a later redemptioner having a subordinate lien may redeem from the earlier redemptioner by paying the amount paid by that redemptioner, ~~together with the amount of any taxes, assessments, utilities, or other items paid by that redemptioner in protection of the title or premises,~~ and interest at the same rate as provided in the original instrument on which the judgment is based, together with the amount stated by the first redemptioner in the notice. The amount stated by a redemptioner in the notice must be treated as a payment of that amount on the indebtedness; and the redemptioner shall immediately shall endorse that on the evidence of the claim. If the claim is a judgment, the redemptioner shall cause a statement of that amount to be entered by the clerk of court in the judgment docket. That credit is ~~deemed~~ conditional only and must be canceled on proof of a further redemption by the debtor or by a redemptioner having a prior right, without payment of the amount credited.

SECTION 4. AMENDMENT. Section 28-24-04 of the North Dakota Century Code is amended and reenacted as follows:

28-24-04. Successive redemptions - Time. If property is redeemed by a redemptioner, another redemptioner, even after the expiration of ~~one year from the day of sale~~ redemption period, may redeem from the last redemption if the redemption is made within sixty days after ~~such last~~ recording of the notice of redemption. This sixty-day limitation does not apply to any redemption made within ~~one year after the sale by whomsoever or from whomsoever such redemption is made~~ period, but all persons entitled to redeem in all cases must have the entire statutory redemption period of one year from the day of sale in which to redeem. The property, as often as a redemptioner is so disposed, may be redeemed again from any previous redemptioner within sixty days after the recording of the last notice of redemption.

SECTION 5. AMENDMENT. Section 28-24-05 of the North Dakota Century Code is amended and reenacted as follows:

28-24-05. Redemptioner shall produce production of requisite papers. A redemptioner shall produce to the officer or person from whom the redemptioner seeks to redeem and shall serve with the redemptioner's notice to the sheriff:

1. A copy of the docket of the judgment under which the redemptioner claims the right to redeem, certified by the clerk of the district court of the county where the judgment is docketed, or, if the redemptioner redeems upon a mortgage or other lien, a note of the record ~~thereof~~ of the mortgage or lien certified by the county recorder;
2. A copy of the assignment necessary to establish the redemptioner's claim, verified by the affidavit of the redemptioner or of a subscribing witness ~~thereto~~ to the assignment; and

3. An affidavit by the redemptioner or the redemptioner's agent showing the amount then actually due on the lien.

SECTION 6. AMENDMENT. Section 28-24-06 of the North Dakota Century Code is amended and reenacted as follows:

28-24-06. Redemption by debtor - Recording certificate - Rights of redemption. The debtor may not be required to pay more to effect a redemption than the purchase price, with interest from the day of sale, at the same rate as provided in the original instrument on which the judgment is based, ~~and all taxes and other items paid under sections 28-24-02 and 28-24-07 with interest on those items from the date of payment, at the same rate as provided in the original instrument on which the judgment is based,~~ despite the fact that the debtor seeks to redeem from a redemptioner. If the debtor redeems, the effect of the sale is terminated and the debtor is restored to the estate. On a redemption by the debtor, the person to whom the payment is made shall execute and deliver to the debtor a certificate of redemption acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. The certificate must be recorded in the office of the county recorder of the county in which the property is situated and the county recorder shall note that record in the margin of the record of the certificate of sale. If the debtor redeems from a redemptioner who, to effect redemption, has paid liens on the property other than for taxes or assessments, the redemptioner is subrogated to all the rights of the former holders of those liens, and the recording of written notice of that redemption is notice of the rights of that redemptioner in and to all the liens the redemptioner holds as equitable assignee as fully as if formal written assignments had been recorded.

SECTION 7. AMENDMENT. Section 28-24-07 of the North Dakota Century Code is amended and reenacted as follows:

28-24-07. Protection of premises purchaser during period of redemption. If a sale of real estate is made under execution or upon mortgage foreclosure, the purchaser at the sale or the purchaser's ~~successors~~ successor in interest, in case of the expiration during the period of redemption of any insurance policy on the premises sold, may pay the premium necessary to procure a renewal of that policy, and, if any taxes or assessments become delinquent, or if any installment of interest or principal on any prior or superior mortgage becomes due during that period of redemption, and any utilities or other items to be paid by the purchaser in protection of the title or premises, the purchaser may pay those charges. The amount ~~so~~ paid, with interest at the same rate as provided in the original instrument on which the judgment is based, is part of the sum necessary to be paid for the redemption from the sale. The payments ~~may~~ must be proved by a written notice of additional lien verified by affidavit of the purchaser, ~~or~~ the purchaser's agent or attorney, stating the items and describing the premises. That notice ~~may~~ must be recorded in the office of the county recorder and a copy of the notice served on the sheriff of the county. After that service the sheriff, ~~before permitting a redemption,~~ shall collect the full amount specified in the notice in addition to the amount which would otherwise be due in redemption from the sale, and shall pay over that amount to the purchaser at the sale, or the purchaser's assignee. If the notice is not served on the sheriff and recorded within five days after payment, redemption may be made without paying those amounts.

SECTION 8. AMENDMENT. Section 28-24-10 of the North Dakota Century Code is amended and reenacted as follows:

28-24-10. Notice of additional lien. If any taxes, assessments, insurance premiums, utility charges, or other items are paid by the purchaser or by a redemptioner, or if the purchaser or redemptioner has or ~~acquires~~ acquired any lien other than that on which the sale or redemption was made, written notice of that item must be given to the sheriff and if that notice is not given to the sheriff, the property may be redeemed without paying that tax, assessment, the amount shown in the notice of additional lien, utility, or other item.

SECTION 9. AMENDMENT. Section 28-24-13 of the North Dakota Century Code is amended and reenacted as follows:

28-24-13. Sheriff shall execute deed. If the property is not redeemed according to law, ~~the purchaser or the purchaser's assignee or the redemptioner, as the case may be, is entitled to a sheriff's deed of the property, and the sheriff shall execute and deliver such a sheriff's deed for the property immediately after the time for redemption in each case has expired~~ to the purchaser, purchaser's assignee, or the redemptioner.

SECTION 10. AMENDMENT. Section 28-24-14 of the North Dakota Century Code is amended and reenacted as follows:

28-24-14. Effect of sheriff's deed - Contents. The sheriff's deed is sufficient evidence of the legality of the sale and the proceedings ~~therein contained in the certificate~~, until the contrary is proved, and vests in the grantee ~~as good and perfect a title in~~ to the premises therein mentioned and described as was vested in the debtor at or after the time when such the real property became liable to the satisfaction of the judgment. Such The deed must recite the execution or executions, or the substance thereof of the execution, and the names of the parties, the amount and date of rendition of the judgment by virtue whereof which the said real property was sold, and must be executed, acknowledged, or proved and recorded as may be provided by law to perfect the a conveyance of real property in other cases.

Approved April 12, 2007

Filed April 13, 2007

CHAPTER 280

HOUSE BILL NO. 1501

(Representatives Brandenburg, Headland, Pollert)
(Senators Erbele, Olafson, Wanzek)

FEEDLOT AND FACILITY PERMIT APPEALS

AN ACT to create and enact a new subsection to section 28-32-50 and a new section to chapter 61-28 of the North Dakota Century Code, relating to appeals regarding permits for livestock feedlots and other permitted facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 28-32-50 of the North Dakota Century Code is created and enacted as follows:

In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapters 23-20.3, 23-25, 23-29, or 61-28 in which two or more of the adverse parties are not an administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

SECTION 2. A new section to chapter 61-28 of the North Dakota Century Code is created and enacted as follows:

Appeal from permit proceedings. An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's

issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

Approved April 12, 2007

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