

# OFFICES AND OFFICERS

## CHAPTER 381

### SENATE BILL NO. 2228

(Senators W. Stenehjem, Andrist, C. Nelson)  
(Representatives Berg, Delmore, Kretschmar)

## PUBLIC RECORDS AND MEETINGS

AN ACT to create and enact a new section to chapter 27-12, sections 44-04-17.5, 44-04-18.01, 44-04-18.02, 44-04-18.10, 44-04-18.11, 44-04-19.05, 44-04-19.2, 44-04-21.1, 44-04-21.2, and subsection 19 of section 54-12-01 of the North Dakota Century Code, relating to public records and public meetings; to amend and reenact sections 44-04-18, 44-04-18.1, 44-04-18.3, 44-04-18.4, 44-04-18.5, 44-04-18.7, 44-04-19, 44-04-19.1, 44-04-20, 44-04-21, and 54-44.2-08 of the North Dakota Century Code, relating to public records and meetings; and to repeal section 44-04-18.2 of the North Dakota Century Code, relating to economic development records and meetings.

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

**SECTION 1.** A new section to chapter 27-12 of the North Dakota Century Code is created and enacted as follows:

**Confidential records.** Information provided to the state bar association regarding applicants or participants in a lawyer referral service or volunteer lawyer program administered by the state bar association is confidential.

**SECTION 2.** Section 44-04-17.5 of the North Dakota Century Code is created and enacted as follows:

**44-04-17.5. Definitions.** As used in sections 44-04-17.5 through 44-04-21.2:

1. "Closed meeting" means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
2. "Closed record" means all or part of an exempt record that a public entity in its discretion has not opened to the public.
3. "Confidential meeting" or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
4. "Executive session" means all or part of a meeting that is closed or confidential.

5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
6. "Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity. "Governing body" also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.
7. "Law" includes federal statutes, applicable federal regulations, and state statutes.
8.
  - a. "Meeting" means a formal or informal gathering, whether in person or through other means such as telephone or video conference, of:
    - (1) A quorum of the members of the governing body of a public entity regarding public business; or
    - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
  - b. "Meeting" includes work sessions, but does not include chance or social gatherings where public business is not considered and does not include the attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.
  - c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.
9. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.
10. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.
11. "Public business" means all matters that relate or may foreseeably relate in any way to:

- a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
  - b. The public entity's use of public funds.
12. "Public entity" means all:
  - a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor to exercise public authority or perform a governmental function;
  - b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
  - c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.
13. "Public funds" means funds received from the state or any political subdivision of the state.
14. "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.
15. "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.

**SECTION 3. AMENDMENT.** Section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18. Access to public records - ~~Penalty~~ Electronically stored information.**

1. Except as otherwise specifically provided by law, all records of ~~a public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds,~~ entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access

- to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.5, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.
2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. The entity may charge a reasonable fee for making or mailing the copy, or both. Fees received under this subsection are public moneys and must be deposited as provided by law. An entity may require payment before making or mailing the copy, or both. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. As used in this subsection, "reasonable fee" means the actual cost to the public entity of making or mailing a copy of a record, or both, including labor, materials, postage, and equipment, but excluding any cost associated with locating, reviewing, or providing access to the requested record, or any cost associated with excising confidential or closed material under section 44-04-18.8. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.
  3. Violations of this section are punishable as an infraction. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal.
  4. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.5 may establish procedures for providing access from an outside location to any computer data base or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity, the entity may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.
  5. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or adverse administrative

proceeding involving that entity, or by an agent of the party, must comply with applicable discovery rules and be made to the attorney representing that entity in the criminal or civil action or adverse administrative proceeding.

6. A denial of a request for records made under this section must describe the legal authority for the denial and must be in writing if requested.
7. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed.
8. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.

**SECTION 4.** Section 44-04-18.01 of the North Dakota Century Code is created and enacted as follows:

**44-04-18.01. Disclosure of public records.**

1. A public entity may not deny a request for an open record on the ground that the record also contains confidential or closed information.
2. Subject to subsection 3 of section 44-04-18, if confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information contained in the record that is not confidential or closed, but shall delete, excise, or otherwise withhold the confidential or closed information.
3. An officer or employee of a public entity may disclose or comment on the substance of an open record. Any agreement prohibiting the disclosure or comment is void and against public policy.
4. Unless otherwise prohibited by federal law, records of a public entity which are otherwise closed or confidential may be disclosed to any public entity for the purpose of law enforcement or collection of debts owed to a public entity, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. For the purpose of this subsection, "public entity" is limited to those entities defined in subdivision a or b of subsection 12 of section 44-04-17.5.

**SECTION 5.** Section 44-04-18.02 of the North Dakota Century Code is created and enacted as follows:

**44-04-18.02. Disclosure pursuant to subpoena or order.**

1. Unless disclosure under a court order is otherwise prohibited or limited by law, closed records must be disclosed pursuant to a subpoena issued by a court, administrative law judge, or administrative hearing officer, or other court order.
2. Unless disclosure under a court order is otherwise prohibited or limited by law, confidential records must be disclosed pursuant to a court order. Upon request of the public entity ordered to make the disclosure, the court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
3. Any person who discloses confidential records of a public entity under this section is immune from prosecution for violating section 12.1-13-01.

**SECTION 6. AMENDMENT.** Section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.1. Public employee personal, medical, and employee assistance records - Confidentiality.**

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and may not be released without the written consent of the employee. As used in this section, the term "public employee" includes any person employed by ~~the state or any of its political subdivisions~~ a public entity.
2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; social security number; payroll deduction information; the name, address, phone number, date of birth, and social security number of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.
3. Nonconfidential information contained in a personnel record of an employee of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.5 is exempt.

**SECTION 7. AMENDMENT.** Section 44-04-18.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.3. Records of law enforcement and correctional employees - Confidential informants.**

1. Any telephone number and the home address of an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential and are not subject to ~~section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.~~ If this information is recorded with other public information, a public agency or record custodian shall permit inspection and receipt of copies of the public

information that is not confidential, but shall delete or withhold the confidential information. A public agency or record custodian may not deny a request for public information on the ground that it is recorded with a confidential address and phone number. A record containing information relating to an employee of the department of corrections and rehabilitation may be disclosed to an appropriate authority under policy established by the department of corrections and rehabilitation.

2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential and not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.
3. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.

<sup>1</sup> **SECTION 8. AMENDMENT.** Section 44-04-18.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial information.**

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. "Trade secret" includes:
  - a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and
  - b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device,

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<sup>1</sup> Section 44-04-18.4 was also amended by section 3 of House Bill No. 1312, chapter 155.

method, technique, or process supplied to or prepared by any ~~state agency, institution, department, or board~~ public entity which is the subject of efforts by the supplying or preparing entity, person, business, or industry to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.

3. "Proprietary information" includes information received from a sponsor of research conducted by ~~an institution~~ a public entity, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced ~~at the institution~~ by the public entity which an employee, ~~institution,~~ or the ~~board~~ entity intends to commercialize.
4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
5. An institution of higher education shall include justification for maintaining the confidentiality of information as to each grant or contract involving confidential information in the institution's regular report to the board of higher education of grants and contracts received. The justification must contain general information required by the board and must include at least the following nonconfidential information:
  - a. A general description of the nature of the information sought to be protected;
  - b. A general explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
  - c. A general explanation of why the information is not readily ascertainable through proper means by other persons;
  - d. A general description of the persons or entities that would obtain economic value from disclosure or use of the information, and how they would obtain this value; and
  - e. A general description of the efforts used to maintain the secrecy of the information.

The board of higher education shall review the justification at a public meeting of the board and shall decide if the confidential status should be maintained for the project. If the board decides against granting the confidential status, the justification may be resubmitted at the next meeting of the board and the confidential status may be maintained until that time. If the board again decides, upon reconsideration, not to grant confidentiality, the information becomes public.



6. Unless made confidential under subsection 1, the following economic development records and information are exempt:
- a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
  - b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.

<sup>2</sup> **SECTION 9. AMENDMENT.** Section 44-04-18.5 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.5. Confidentiality of computer ~~Computer~~ software programs -**  
**Exemption.** Any computer software program or component of a computer software program developed by a public entity or for which ~~any state agency, institution, department, or board~~ a public entity acquires a license, copyright, or a patent is ~~confidential~~ exempt. A public entity may enter into agreements for the sale, licensing, and distribution of its licensed, patented, or copyrighted computer software programs.

**SECTION 10. AMENDMENT.** Section 44-04-18.7 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.7. Criminal intelligence information and criminal investigative information - Nondisclosure - Record of information maintained.**

1. Active criminal intelligence information and active criminal investigative information are ~~confidential and~~ not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. A criminal justice agency shall maintain a list of all files containing active criminal intelligence and investigative information which have been in existence for more than one year. With respect to each file, the list must contain the file's number or other identifying characteristic and the date the file was established. The list required under this subsection is subject to section 44-04-18. Criminal intelligence and investigative information that is not considered "active" is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota to the extent that the information is personal information.
2. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice

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<sup>2</sup> Section 44-04-18.5 was also amended by section 1 of Senate Bill No. 2091, chapter 382.

agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information must be considered "active" as long as it is related to intelligence gathering conducted with a reasonable good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

3. "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable good faith anticipation of securing an arrest or prosecution in the foreseeable future.
4. "Criminal justice agency" means any law enforcement agency or prosecutor. The term also includes any other unit of government charged by law with criminal law enforcement duties or having custody of criminal intelligence or investigative information for the purpose of assisting law enforcement agencies in the conduct of active criminal investigations or prosecutions.
5. "Criminal intelligence and investigative information" does not include:
  - a. Arrestee description, including name, date of birth, address, race, sex, physical description, and occupation of arrestee.
  - b. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer.
  - c. Conviction information, including the name of any person convicted of a criminal offense.
  - d. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person.
  - e. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.
  - f. A crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number.
  - g. Radio log, including a chronological listing of the calls dispatched.
  - h. General registers, including jail booking information.
  - i. Arrestee photograph, if release will not adversely affect a criminal investigation.
6. "Personal information" means a person's medical information; motor vehicle operator's identification number; social security number; and any credit, debit, or electronic fund transfer card number. ~~If this information~~

is recorded with other public information, a public agency or record custodian shall permit inspection and receipt of copies of the public information that is not confidential, but shall delete or withhold the confidential information. A public agency or record custodian may not deny a request for public information on the ground that it is recorded with confidential information.

**SECTION 11.** Section 44-04-18.10 of the North Dakota Century Code is created and enacted as follows:

**44-04-18.10. Cooperative investigations and litigation.** A record acquired under a written agreement between a governmental agency in another jurisdiction and the attorney general is confidential, except for the purposes specified in the agreement, if the attorney general determines:

1. The record is necessary to further a civil investigation or litigation by the state;
2. The record can be obtained only by agreeing to keep the record confidential; and
3. The record is treated as confidential by the provider of the records.

**SECTION 12.** Section 44-04-18.11 of the North Dakota Century Code is created and enacted as follows:

**44-04-18.11. Lists of children.** Any record of a public entity that is a compilation of children's names, addresses, phone numbers, or any combination thereof, is exempt.

**SECTION 13. AMENDMENT.** Section 44-04-19 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-19. Open governmental Access to public meetings.** Except as otherwise specifically provided by law, all meetings of a public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, entity must be open to the public. The governing members of the above bodies, boards, commissions, agencies, or organizations meeting in violation of this section are guilty of an infraction for a first offense. A public or governmental body, board, bureau, commission, or agency meets in violation of this section if it refuses That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.5 which does not regard public business is not required to be open under this section.

1. This section is violated when any person or persons is denied access to such a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the person or persons seeking access.
2. For purposes of this section, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting.
3. The right of a person to attend a meeting under this section includes the right to photograph, to record on audio or video tape and to broadcast

live on radio or television the portion of the meeting that is not held in executive session, provided that there is no active interference with the conduct of the meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.

4. For meetings subject to this section where one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified in the notice issued under section 44-04-20.

**SECTION 14.** Section 44-04-19.05 of the North Dakota Century Code is created and enacted as follows:

**44-04-19.05. Confidential or closed meetings.**

1. A governing body may hold an executive session to consider or discuss closed or confidential records.
2. Unless a different procedure is provided by law, an executive session that is authorized by law may be held if:
  - a. The governing body first convenes in an open session and, unless a confidential meeting is required, passes a motion to hold an executive session;
  - b. The governing body announces during the open portion of the meeting the topics to be discussed or considered during the executive session and the body's legal authority for holding an executive session on those topics;
  - c. The executive session is recorded under subsection 5;
  - d. The topics discussed or considered during the executive session are limited to those for which an executive session is authorized by law and that have been previously announced under this subsection; and
  - e. Final action concerning the topics discussed or considered during the executive session is taken at a meeting open to the public, unless final action is otherwise required by law to be taken during a closed or confidential meeting. For purposes of this subsection, "final action" means a collective decision or a collective commitment or promise to make a decision on any matter, including formation of a position or policy, but does not include guidance given by members of the governing body to legal counsel or other negotiator in a closed attorney consultation or negotiation preparation session authorized in section 44-04-19.1.
3. The remainder of a meeting during which an executive session is held is an open meeting unless a specific exemption is otherwise applicable.
4. The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and

adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session.

5. All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section 44-04-18.02 or to the attorney general for the purpose of administrative review under section 44-04-21.1. The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section 12.1-13-01.

**SECTION 15. AMENDMENT.** Section 44-04-19.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-04-19.1. Open records and open meetings - Exemptions for attorney work product ~~and~~, attorney consultation, and negotiation preparation.**

1. Attorney work product is exempt from section 44-04-18. Attorney work product and copies thereof shall not be open to public inspection, examination, or copying unless specifically made public by the public agency entity receiving such work product.
2. Attorney consultation is exempt from section 44-04-19. That portion of a meeting of a ~~public agency governing body~~ during which an attorney consultation occurs may be closed; ~~by a majority vote of the public agency governing body in an open meeting for the purpose of having the attorney consultation under section 44-04-19.05. The remainder of the meeting, where no attorney consultation occurs, is an open meeting unless a specific exemption is otherwise applicable.~~
3. "Attorney work product" means any document or record that:
  - a. Was prepared by an attorney representing a public agency entity or prepared at such an attorney's express direction;
  - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the agency entity; and
  - c. Was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of ~~imminent~~ reasonably predictable civil or criminal litigation or adversarial administrative proceedings.
4. "Attorney consultation" means any discussion between a ~~public agency governing body~~ and its attorney in instances in which the ~~public agency governing body~~ seeks or receives the attorney's advice regarding and in anticipation of ~~imminent~~ reasonably predictable civil or criminal litigation or adversarial administrative proceedings or concerning pending civil or criminal litigation or pending adversarial administrative

proceedings. Mere presence or participation of an attorney at a meeting is not sufficient to constitute attorney consultation.

5. "Public agency" means all public or governmental bodies, boards, bureaus, commissions, or agencies of the state, or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds or expending public funds.
6. "Adversarial administrative proceedings" include only those administrative proceedings where the administrative agency or institution of higher education acts as a complainant or, respondent, or decisionmaker in an adverse administrative proceeding. This term does not refer to those instances where the administrative agency or institution acts in its own rulemaking capacity.
7. 6. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public agency entity, unless another exception to section 44-04-19 applies or if disclosure would have an adverse fiscal effect on the conduct or settlement of other pending or reasonably predictable civil or criminal litigation or adversarial administrative proceedings.
7. A governing body may hold an executive session under section 44-04-19.05 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.
8. Nothing in this section may be construed to waive any attorney-client privilege of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.5 regarding matters that do not pertain to public business.

**SECTION 16.** Section 44-04-19.2 of the North Dakota Century Code is created and enacted as follows:

**44-04-19.2. Open meetings exemption - Legislative caucuses.** A caucus of members of either house of the legislative assembly may meet in an executive session that is not subject to section 44-04-19.05 if the meeting is not held on public property.

**SECTION 17. AMENDMENT.** Section 44-04-20 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-20. Notice of public meetings required - Exceptions - Schedule set by statute, ordinance, or resolution.**

1. Unless otherwise provided by law, public notice must be given in advance of all meetings governed by of a public entity as defined in section ~~44-04-19~~ 44-04-17.5, including executive sessions, conference call meetings, and video conferences. ~~This notice~~ Unless otherwise specified

by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.

2. The notice required in this section must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice must also contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by telephone or video conference, the location of the meeting and the place the meeting is held is the location of a speakerphone or monitor as required under section 44-04-19.
3. In cases where the public governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.5, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other public bodies. This schedule must be furnished to anyone who requests the information. ~~In addition, every public body shall post public notice of each of its meetings.~~ When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
4. The notice required in this section must be posted at ~~its~~ the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.5, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
5. The public governing body's presiding officer has the responsibility of assuring that such public notice is given at the same time as such public governing body's members are notified, and that this notice is available to anyone requesting such information.
6. In the event of emergency or special meetings of a public governing body, the person calling such a meeting shall also notify the public entity's official newspaper, if any, and any representatives of the news media; if any, located where the meeting is to be held and which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such public governing body's members are notified. ~~Where reasonable and practicable, a public body should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution.~~ Topics that may be considered at an emergency or special meeting are limited to those included in the notice to the media.

7. A committee of an institution under the authority of the state board of higher education, in lieu of the notice requirements in this section, may file in the office of the president of the institution the name, address, and telephone number of a person who may be contacted to obtain specific times, dates, and locations of any meetings of that committee or to request specific notification of each meeting of that committee.
8. The attorney general shall prepare general guidelines to assist public bodies entities in following the provisions of this section. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public body, notices required by this section do not have to be published. The provisions of section 12.1-11-06 do not apply to this section.
9. This section is violated when a notice is not provided in substantial compliance with this section.

**SECTION 18. AMENDMENT.** Section 44-04-21 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-21. Open voting at public meetings required - Results recorded in minutes.**

1. Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.
2. Minutes must be kept of all open meetings and are records subject to section 44-04-18. The minutes must ~~show the~~ include, at a minimum:
  - a. The names of the members attending the meeting;
  - b. The date and time the meeting was called to order and adjourned;
  - c. A list of topics discussed regarding public business;
  - d. A description of each motion made at the meeting and whether the motion was seconded;
  - e. The results of every vote taken at the meeting; ; and ~~must show the recorded~~
  - f. The vote of each member on every recorded roll call vote.

Notwithstanding subsection 8 of section 44-04-18, the disclosure of minutes kept under this subsection may not be conditioned on the the approval of the minutes by the governing body.

**SECTION 19.** Section 44-04-21.1 of the North Dakota Century Code is created and enacted as follows:



**44-04-21.1. Administrative review procedure.**

1. Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.05, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.05. The attorney general shall issue to the public entity involved an opinion on the alleged violation unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. If the request pertains to a public entity as defined in subdivision c of subsection 12 of section 44-04-17.5, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.
2. If the attorney general issues a written opinion concluding that a violation has occurred, the public entity has seven days after the opinion is issued, regardless of whether a civil action is filed under section 44-04-21.2, to disclose the record, to issue a notice of a meeting that will be held within a reasonable time to correct the violation, or to take steps to correct any other violation. If the public entity fails to take the required action within the seven-day period and the person requesting the opinion prevails in a civil action brought under section 44-04-21.2, the person must be awarded costs, disbursements, and reasonable attorneys fees in the action and on appeal. The consequences for failing to comply with an attorney general's opinion issued under this section will be the same as for other attorney general's opinions, including potential personal liability for the person or persons responsible for the noncompliance.
3. If a state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.5 does not comply in full with the attorney general's opinion, and a civil action is brought under section 44-04-21.2 or is reasonably predictable, the entity, at its sole cost and expense, shall retain separate counsel who has been approved and appointed by the attorney general as a special assistant attorney general to represent the entity in that action.

**SECTION 20.** Section 44-04-21.2 of the North Dakota Century Code is created and enacted as follows:

**44-04-21.2. Remedies for violations and enforcement procedure.**

1. A violation of section 44-04-18, 44-04-19, 44-04-19.05, 44-04-20, or 44-04-21 is not a violation of section 12.1-11-06, but may be the subject of a civil action brought by an interested person or entity. For an alleged violation of section 44-04-18, the complaint must be accompanied by a dated, written request for the requested record. If a court finds that any of these sections have been violated by a public entity, the court may award declaratory relief, an injunction, a writ of prohibition or mandamus, costs, disbursements, and reasonable

attorney's fees against the entity. For an intentional or knowing violation of section 44-04-18, 44-04-19, 44-04-19.05, 44-40-20, or 44-04-21, the court may also award damages in an amount equal to one thousand dollars or actual damages caused by the violation, whichever is greater. An action under this subsection must be commenced within sixty days of the date the person knew or should have known of the violation or within thirty days of issuance of an attorney general's opinion on the alleged violation, whichever is later. Venue for an action is in the county where the entity has its principal office or, if the entity does not have a principal office within the state, in Burleigh County.

2. Any action that is a product of a violation of section 44-04-19, 44-04-20, or 44-04-21 is voidable by a court in a civil action authorized by this section.
3. The remedies provided in this section are not available if a violation of section 44-04-18, 44-04-19, 44-04-20, or 44-04-21 has been corrected before a civil action is filed and no person has been prejudiced or harmed by the delay. An interested person or entity may not file a civil action under this section seeking attorney's fees or damages, or both, until at least three working days after providing notice of the alleged violation to the chief administrative officer for the public entity.

**SECTION 21.** Subsection 19 of section 54-12-01 of the North Dakota Century Code is created and enacted as follows:

19. Give written opinions to public entities as defined in subdivision a or b of subsection 12 of section 44-04-17.5, when requested by an interested person under section 44-04-21.1.

<sup>3</sup> **SECTION 22. AMENDMENT.** Section 54-44.2-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~**54-44.2-08. Access to electronically stored information - Coordination by information services division.** An entity of the state may establish procedures for providing access to any computer data base or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. The entity may charge a reasonable fee for providing that access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available. The information services division shall cooperate with each state entity providing access to any computer data base or electronically filed or stored information under subsection 4 of section 44-04-18 to assist in providing economical, efficient, and compatible access.~~

**SECTION 23. REPEAL.** Section 44-04-18.2 of the North Dakota Century Code is repealed.

Approved April 10, 1997  
Filed April 11, 1997

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<sup>3</sup> Section 54-44.2-08 was also amended by section 13 of House Bill No. 1034, chapter 457.

**CHAPTER 382****SENATE BILL NO. 2091**

(Industry, Business and Labor Committee)

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

**COMPUTER SOFTWARE NOT OPEN RECORD**

AN ACT to amend and reenact section 44-04-18.5 of the North Dakota Century Code, relating to open records exemptions for computer software programs developed by a state agency and authorizing agreements for licensing of computer software programs; and to declare an emergency.

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

<sup>4</sup> **SECTION 1. AMENDMENT.** Section 44-04-18.5 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.5. ~~Confidentiality of computer~~ Computer software programs exempt.**

Any computer software program or component of a computer software program contracted, developed, or acquired by a state agency, institution, department, or board and for which any the state agency, institution, department, or board acquires a license, copyright, or a patent is confidential exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. After receiving written approval from the governor, a state agency, institution, department, or board may enter into agreements for the sale, licensing, and distribution of its contracted, licensed, patented, or copyrighted computer software programs. A state agency, institution, department, or board may take any needed action, including legal action, to protect the state's interest in the computer software against improper or unlawful use or infringement and may collect and enforce the collection of any sums due for the licensing or sale of the computer software.

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

Approved April 1, 1997

Filed April 2, 1997

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<sup>4</sup> Section 44-04-18.5 was also amended by section 9 of Senate Bill No. 2228, chapter 381.

**CHAPTER 383****HOUSE BILL NO. 1124**

(Industry, Business and Labor Committee)

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

**FINANCIAL ACCOUNT NUMBER ACCESS**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to access to financial account numbers; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Access to financial account numbers.** Any credit, debit, or electronic fund transfer card or account number and any financial institution account number that a public entity, elected official, or appointed official uses or has available for making electronic or other deposits, transfers, or payments is not an open record.

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

Approved January 31, 1997  
Filed January 31, 1997

## CHAPTER 384

### HOUSE BILL NO. 1353

(Representative Keiser)

#### NOTARY NAME CHANGE AND FEES

AN ACT to create and enact a new section to chapter 44-06 of the North Dakota Century Code, relating to name changes of notaries public; to amend and reenact sections 44-06-04, 44-06-05, 44-06-11, 44-06-13, 44-06-13.1, and 44-06-14 of the North Dakota Century Code, relating to bonds, seals, commissions, and fees of notaries public; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 44-06-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-06-04. Filing of oath, bond, and impression of notarial seal - Requirements of seal.** Each notary public, before entering upon the duties of such office, shall obtain an official seal bearing the notary public's name and shall file a legible impression of such seal and the notary public's oath and bond, in the office of the secretary of state. The secretary of state, upon receipt of the proper fee, oath, and bond, shall issue a certificate of authorization with which the notary public may obtain an official notary seal. A notary seal vendor may provide a notary with an official seal only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's seal on the certificate of authorization and return the certificate of authorization to the secretary of state. After the certificate of authorization is received, approved, and filed, the secretary of state shall issue a notary commission that authorizes the notary to commence the duties of the office of notary public.

An official notary seal may not contain a reproduction of the great seal of the state. An official seal is the property of the notary only and may not be retained or used by any other person. Upon the resignation, removal, revocation, or expiration of a notary's commission, or the death or name change of a notary, the notarial seal must be destroyed. When a notary's official seal is lost, damaged, or is rendered otherwise unworkable, the notary shall immediately submit written notice of that fact to the secretary of state. Within five working days after receipt of the notice, the secretary of state shall issue a new certificate of authorization which a notary may use to obtain a replacement seal.

**SECTION 2.** A new section to chapter 44-06 of the North Dakota Century Code is created and enacted as follows:

**Name change.** A notary who has legally changed the notary's name shall submit to the secretary of state a rider to the notary's surety bond stating both the old and new names, the effective date of the new name, and a ten dollar fee within thirty days of the name change. Upon receipt of the rider and fee the secretary of state shall issue a certificate of authorization that a notary public may use to obtain a new seal. Once the authorization is on file the secretary of state shall issue a commission with the notary's new name.

**SECTION 3. AMENDMENT.** Section 44-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-05. Vacancy - Disposition of records and seals.** Whenever the office of any notary public becomes vacant, the record of ~~such the~~ notary together with all papers relating to the office must be deposited in the office of the secretary of state except for the seal which must be destroyed as provided in section 44-06-04. If a notary public resigns the notary's commission, the notary shall notify the secretary of state within thirty days of the resignation, and shall indicate the effective date of the resignation. Any notary public who, on resignation or removal from office, or any executor or ~~administrator~~ personal representative of the estate of any deceased notary public who neglects to deposit ~~such the~~ records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces, or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars, and ~~he~~ that person also is liable in a civil action for damages to any party injured.

**SECTION 4. AMENDMENT.** Section 44-06-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-06-11. Revocation of notary commission - Notice.** In case the commission of ~~any a~~ person appointed as a notary is subject to a revocation action, the secretary of state shall give notice thereof by mail to ~~such that~~ person immediately and to the clerk of the district court of the proper county, using the procedures of chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding. A notary whose commission is revoked may be denied a new commission for a period of up to six years following the date of revocation.

**SECTION 5. AMENDMENT.** Section 44-06-13 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-13. Acting as notary when disqualified - Penalty.** ~~Any~~ A notary public who exercises the duties of ~~his a~~ a notary's office with knowledge that ~~his the~~ the notary's commission has expired or has been ~~canceled~~ revoked or that ~~he the~~ the notary is disqualified otherwise is guilty of an infraction, and, if appropriate, ~~his the~~ the notary's commission must be ~~canceled~~ revoked by the secretary of state using the procedure under chapter 28-32.

**SECTION 6. AMENDMENT.** Section 44-06-13.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-06-13.1. Wrongfully notarizing document Prohibited acts - Penalty.** A notary public may not notarize a signature on a document if:

1. The document was not signed in the presence of the notary public.
2. The name of the notary public or the spouse of the notary public ~~is a party to the document~~ appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.

4. The notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.

A notary public who violates this section is guilty of an infraction and the notary public's commission must be ~~canceled~~ revoked by the secretary of state; ~~who shall give written notice of such cancellation to the notary public using the procedure under chapter 28-32.~~

**SECTION 7. AMENDMENT.** Section 44-06-14 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-14. Fees to be charged by notaries public for notarial acts - Penalty.** A notary public is entitled to charge and receive the following fees: not more than five dollars per notarial act. A notary who charges a fee exceeding that amount is guilty of an infraction. It is an infraction for any person other than the notary public to impose or collect any monetary fee, charge, or commission in connection with the notarization of any document.

1. ~~For each protest, fifty cents.~~
2. ~~For recording the same, twenty-five cents.~~
3. ~~For each notice of protest completed and served, twenty-five cents and postage for mailing the notice.~~
4. ~~For taking affidavit and seal, one dollar and fifty cents.~~
5. ~~For administering an oath or affirmation, ten cents.~~
6. ~~For taking a deposition, each ten words, one and one-half cents.~~
7. ~~For each certificate and seal, one dollar and fifty cents.~~
8. ~~For taking proof of acknowledgment, one dollar and fifty cents.~~

Approved March 25, 1997

Filed March 26, 1997

## CHAPTER 385

### HOUSE BILL NO. 1360

(Representatives Wardner, Oban, Stenehjem)  
(Senators Holmberg, Robinson, St. Aubyn)

## STATE EMPLOYEE EXPENSE REIMBURSEMENT

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to state officer and employee expense reimbursement.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Expenses for travel within the state must be reimbursed at the following rates for each quarter of any twenty-four-hour period:
  - a. First quarter is from six a.m. to twelve noon and the sum must be four dollars. First quarter reimbursement may not be made if travel began after seven a.m.
  - b. Second quarter is from twelve noon to six p.m. and the sum must be six dollars.
  - c. Third quarter is from six p.m. to twelve midnight and the sum must be ten dollars.
  - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed ~~thirty-five~~ thirty-nine dollars plus any additional applicable state or local taxes.

Approved April 1, 1997  
Filed April 2, 1997